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THE

MUNICIPAL CODE

OF THE

PROVINCE OF QUEBEC

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BY THE SAME AUTHOR

Code of Civil Procedure of the Province of Quebec (II Edward VII inclusive).

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Quebec (Province) Laws, statutes, etc. Codes, municipal

THE

MUNICIPAL CODE

OF THE

PROVINCE OF QUEBEC

(ANNOTATED)

CONTAINING ALL THE JUDGMENTS OF THE COURTS. AN HISTORICAL SKETCH OF OUR MUNICIPAL INSTITUTIONS. ALSO AN APPENDIX GIVING THE QUEBEC LICENSE ACT, THE QUEBEC ELECTION ACT AND THE LAW RELATING TO JURORS AND JURIES, THE WHOLE COMPILED, VERIFIED AND INDEXED BY

ROBERT STANLEY WEIR, D. C. L.

RECORDER OF MONTREAL.

Author of An Insolvency Manual, &c.

MONTREAL.

C. THEORET, PUBLISHER,

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To

THE HON. HORACE ARCHAMBEAULT, K.C.,

Speaker of the Legislative Council

and

Attorney General of the Province of Quebec,

This book

is respectfully dedicated as an expression of esteem for his devotion to the interests of the profession which he adorns and of the Province of which he is a distinguished citizen.

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PREFATORY NOTE.

The Editor has now the pleasure of presenting to the bar and the public this edition of the Municipal Code to take its place beside the Civil Code for Lower Canada and the Code of Civil Procedure which he has already issued. The large number of judicial decisions gathered under the appropriate articles show how important a place municipal institutions occupy in this province. A study of these decisions by municipal officers and others should tend to elucidate the text of the Code and presumably lessen the occasions for litigation.

It has been thought well to include the Quebec Election Act, 1895, the Quebec License Law, and the provisions of the revised statutes relating to Jurors and Juries for convenience of reference.

The historical sketch of the development of our municipal legislation is reproduced from a larger essay entitled "Municipal Institutions in Canada" which I have contributed to the Canadian Encyclopædia.

R. STANLEY WEIR.

Recorder's Chambers,
Montreal, July 30th, 1902.

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TABLE OF CONTENTS

LIST OF CASES CITED.. XXI
TABLE OF ABBREVIATIONS.. XXXIV
MUNICIPAL INSTITUTIONS IN QUEBEC.. XXXV

PRELIMINARY TITLE

PAGES

EXTENT OF THE MUNICIPAL CODE; DECLARATORY AND INTERPRETATIVE PROVISIONS.. 1

BOOK FIRST

ORGANIZATION OF MUNICIPAL CORPORATIONS.

TITLE FIRST.—ERECTION OF MUNICIPALITIES.. 14
Preliminary provision.. 14
CHAPTER I.—ERECTION OF COUNTY MUNICIPALITIES.. 14
" II.—ERECTION OF LOCAL MUNICIPALITIES.. 15
Section I.—Rural municipalities.. 15
§ I.—Of municipalities of a parish or of part of a parish 15
§ II.—Of municipalities of a township or of part of a township.. 16
§ III.—Of united township municipalities.. 18
§ IV.—Annexation of a territory to a rural municipality. 18
§ V.—Separation of a territory annexed or united to another.. 19
Section II.—Of town and village municipalities.. 20
§ I.—Of existing town and village municipalities.. .. 20
§ II.—Erection of new village municipalities.. 20
§ III.—Erection of new town municipalities.. 23
§ IV.—Annexation of a territory to a town or village municipality.. 24
§ V.—Annexation of a town or village municipality to an adjoining local municipality.. 24
CHAPTER III.—EFFECT OF THE CHANGE OF THE LIMITS OF A MUNICIPALITY UPON THE OBLIGATIONS AND RIGHTS OF RATE PAYERS.. 25
Section I.—Settlement and division of joint debts.. 25
" II.—Division of common property.. 27
" III.—Miscellaneous provisions.. 28
TITLE SECOND.—PROVISIONS COMMON TO ALL MUNICIPAL CORPORATIONS.. 29
CHAPTER I.—OF THE MUNICIPAL COUNCIL.. 29
Section I.—General provisions.. 29
" II.—Of the members of the council.. 35
" III.—Provisions specially applicable to the head of the council.. 37
" IV.—Of the sessions of the council.. 38

Digitized by Google

PAGES

CHAPTER II.—OF THE OFFICERS OF THE MUNICIPAL COUNCIL.. 46
Section I.—Of the secretary-treasurer.. 46
§ I.—Of the security furnished by the secretary-treasurer.. 47
§ II.—General duties of the secretary-treasurer.. 48
Section II.—Of the auditors.. 53
" III.—Of appointments by the lieutenant-governor.. 54
" IV.—Miscellaneous provisions.. 54
CHAPTER III.—OF PERSONS BOUND TO ACCEPT MUNICIPAL OFFICES AND OF THOSE INCAPABLE OF OR EXEMPT FROM DISCHARGING THEM.. 57
Section I.—Of persons bound to accept municipal offices.. 57
" II.—Of persons disqualified for municipal offices.. 58
" III.—Of persons exempt from municipal offices.. 60
CHAPTER IV.—OF MUNICIPAL NOTICES.. 61
Section I.—General provisions.. 61
" II.—Of special notices.. 62
" III.—Of public notices.. 63
CHAPTER V.—OF LANGUAGES TO BE USED IN THE COUNCIL AND IN MUNICIPAL PROCEEDINGS.. 65
TITLE THIRD.—PARTICULAR RULES APPLICABLE TO COUNTY CORPORATIONS.. 66
CHAPTER I.—OF THE COUNTY COUNCIL.. 66
General provisions.. 66
Section I.—Of the warden.. 66
" II.—Of the sessions of county councils.. 68
CHAPTER II.—OF COUNTY DELEGATES.. 68
Section I.—General provisions.. 68
" II.—Of the board of delegates.. 69
TITLE FOURTH.—RULES COMMON TO EVERY LOCAL MUNICIPAL CORPORATION.. 71
CHAPTER I.—OF THE LOCAL COUNCIL.. 71
Section I.—General provisions.. 71
" II.—Of persons disqualified from acting as councillors.. 73
" III.—Of sessions of the council.. 74
CHAPTER II.—OF MUNICIPAL ELECTORS.. 75
CHAPTER III.—ELECTIONS OF LOCAL COUNCILLORS.. 76
Section I.—Time of holding general elections; notice required therefor.. 76
" II.—Of the officer presiding at the elections.. 77
" III.—Meeting of municipal electors.. 79
CHAPTER IV.—APPOINTMENT OF LOCAL COUNCILLORS BY THE LIEUTENANT-GOVERNOR.. 84
CHAPTER V.—APPOINTMENT OF MAYOR.. 85
CHAPTER VI.—VACANCIES IN THE LOCAL COUNCIL.. 86
Section I.—Vacancies in the office of councillor.. 86
" II.—Vacancies in the office of Mayor.. 87
CHAPTER VII.—CONTESTED APPOINTMENTS OF MEMBERS OF THE LOCAL COUNCIL.. 89
CHAPTER VIII.—OF THE OFFICERS OF THE LOCAL COUNCIL.. 95
General provisions.. 95
Section I.—Provisions specially applicable to the secretary-treasurer of the local council.. 96
" II.—Of valuators.. 98
" III.—Of road inspectors.. 98
" IV.—Of rural inspectors.. 106

Digitized by Google

PAGES

§ I.—Public nuisances.. 108
§ II.—Clearances.. 108
§ III.—Boundary ditches.. 109
§ IV.—Boundary fences.. 110
Section V.—Of pound-keepers.. 112

BOOK SECOND

POWERS OF MUNICIPAL COUNCIL.

PAGES

Preliminary provisions.. 116
TITLE FIRST.—MUNICIPAL BY-LAWS.. 116
CHAPTER I.—GENERAL PROVISIONS.. 116
CHAPTER II.—BY-LAWS WITHIN THE JURISDICTION OF ALL MUNICIPAL COUNCILS.. 119
Section I.—Government of the council and of its officers.. 119
" II.—Public works of the municipality.. 120
" III.—Aid in the construction, improvement and maintenance of public works and undertakings, not belonging to the corporation.. 121
" IV.—Aid to colonisation, agriculture, horticulture, arts and sciences.. 123
" V.—Acquisition of property and public works.. 123
" VI.—Direct taxation.. 124
" VII.—Loans and issue of debentures.. 125
" VIII.—Administration of corporation funds.. 127
" IX.—Miscellaneous provisions.. 128
CHAPTER III.—BY-LAWS SPECIALLY WITHIN THE JURISDICTION OF COUNTY COUNCIL.. 129
Section I.—Chief-place.. 129
" II.—Circuit court and registry office of the county.. .. 129
" III.—Roads and bridges.. 131
" IV.—Fire in the woods.. 133
" V.—Indemnity to members of the council.. 133
CHAPTER IV.—BY-LAWS SPECIALLY WITHIN THE JURISDICTION OF LOCAL COUNCILS.. 133
Section I.—Public highways.. 133
§ I.—Roads and Bridges.. 133
§ II.—Public places.. 137
§ III.—Sidewalks and sewers.. 138
§ IV.—Miscellaneous provisions.. 138
Section II.—Ferries.. 138
" III.—Plan and division of the municipality.. 139
" IV.—Abuses prejudicial to agriculture.. 140
" V.—Sale of intoxicating liquors.. 140
§ I.—Prohibition of the sale of intoxicating liquors.. .. 140
§ II.—Limitation of the number of licenses for the sale of intoxicating liquors.. 142
§ III.—Miscellaneous provisions.. 143
Section VI.—Storage of gunpowder and other explosive substances.. 143
" VII.—Sale of bread and wood.. 144
" VIII.—Trade licenses.. 144
" IX.—Personal taxes.. 146

Digitized by Google

		Pages
Section	X.—Indemnities and relief	146
"	XI.—Public nuisances	147
"	XII.—Decency and good morals	148
"	XIII.—Public health	149
"	XIIIa.—Water	149
"	XIV.—Miscellaneous provisions	149
Chapter	V.—By-laws specially within the jurisdiction of towns or village councils	151
Section	I.—Division of the municipality into wards	151
"	II.—Masters and servants	152
"	III.—Public markets	153
"	IV.—Water and lights	154
"	V.—Public nuisances	157
"	VI.—Miscellaneous provisions	158
Chapter	VI.—Formalities to be observed before municipal by-laws are carried into effect or put into force	161
Section	I.—Approval by municipal electors	161
"	II.—Approval of the lieut.-governor in council	162
"	III.—Promulgation of municipal by-laws	163
Chapter	VII.—Annulment of municipal by-laws	165
Title Second.	—Valuation of taxable property	168
Chapter	I.—What property is taxable	168
Chapter	II.—Making of the valuation roll	170
Chapter	III.—Examination of the valuation roll	174
Chapter	IV.—General provisions	178
Title Third.	—Of municipal roads	180
Chapter	I.—General provisions	180
Chapter	II.—Mode of drawing up a proces-verbal and the acts of apportionment which relates thereto	203
Section	I.—Of the proces-verbal	203
"	II.—Of the act of apportionment	211
"	III.—General provisions	212
Chapter	III.—Of persons liable for work on roads in the absence of a proces-verbal or by-law	213
Section	I.—General provisions	213
"	II.—Of front roads	213
"	III.—Of by-roads	214
Chapter	IV.—Of winter roads	215
Section	I.—General provisions	215
"	II.—Of winter roads which replace municipal summer roads	217
"	III.—Of winter roads on rivers	218
Title Fourth.	—Of municipal bridges	220
Title Fifth.	—Of ferries	222
Title Sixth.	—Of municipal water-courses	223
Title Seventh.	—Of other public works of municipal corporations	230
Title Eighth.	—Expropriation for municipal purposes	231
Title Ninth.	—Appeals to the county council	238
Title Tenth.	—Municipal taxes and debts	242
Chapter	I.—Municipal taxes	242
Section	I.—General provisions	242
"	II.—Collection of taxes on local municipalities	248
Chapter	II.—Municipal debts	254
Section	I.—General provisions	254
"	II.—Special provisions relating to municipal debentures	256

Digitized by Google

PAGES

TITLE ELEVENTH.—SALE OF LANDS LIABLE FOR MUNICIPAL TAXES IN DEFAULT OF PAYMENT.. 260
CHAPTER I.—SALE AND ADJUDICATION OF LANDS.. 260
CHAPTER II.—REDEMPTION OF LANDS ADJUDGED.. 267

BOOK THIRD

SPECIAL PROCEEDINGS.

TITLE FIRST.—EXECUTION OF JUDGMENTS RENDERED AGAINST MUNICIPAL CORPORATIONS.. 269
TITLE SECOND.—RECOVERY OF PENALTIES IMPOSED IN VIRTUE OF THIS CODE.. 272
CHAPTER I.—GENERAL PROVISIONS.. 272
CHAPTER II.—OF PROSECUTIONS BEFORE JUSTICES OF THE PEACE.. 275
TITLE THIRD.—APPEALS TO THE CIRCUIT COURT.. 276
EXCEPTIONAL PROVISIONS.. 284
FINAL PROVISIONS.. 288
INDEX.. .. ..

APPENDIX

1.—THE QUEBEC ELECTION ACT 1895.. 290
2.—QUEBEC LICENSE LAW.. 354
3.—JURORS AND JURIES.. 421

FORMS FOR MUNICIPAL CODE.. 433

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Table of Contents of Quebec License Act

	Article.
Quebec License Law	1

PART I.—*Liquor Licenses.*

Interpretative and Declaratory	2
General Prohibitions	3
Issue and Duration of Licenses	4-10
Inn Licenses	11-35
Transfer of Licenses	36-38
Restaurant Licenses	39
Beer and Wine Licenses	40
Temperance Hotel Licenses	41
Railway Buffet Licenses	42-43
Watering Place Hotel Licenses	42-43
Dining Car Licenses	44
Steamboat Bar Licenses	45
Club Licenses	46
Retail Liquor Shop Licenses	47
Wholesale Liquor Licenses	48
Wholesale and Retail Licenses	49
Sample and Commission Licenses	50
Bottlers' Licenses	51
Cider and Native Wine Licenses	52
Special Liquor Licenses	53
Duties of Clerks and Secretary-Treasurers	54
Licenses under Prohibitory By-Laws	55-63
Fees and Duties on Licenses	64
Licenses under Canada Temperance Act	65-70
Provisions respecting Valuation	71-75
Reduction of Duties on Licenses	76-77
Duties of Collectors respecting issue of Licenses	78

PENALTIES :

For selling liquors in a mining division	79-83
For illicit sale of liquors	84-160
Rights of municipalities as to closing bars, etc	161
Amount to be levied by municipalities upon licenses	162

PROSECUTIONS :

General provisions and procedure	163-197
Judgments	198-202
Costs	203-206
Execution of judgments	207-216
Certiorari and Prohibition	217

Digitized by Google

FINES : ARTICLE.

Application.. 218-221
Remission.. 222
Additional Provisions.. 223-227

PART II. — *Other Licenses.*

General Provisions.. 228
General Prohibitions.. 229
Auctioneers.. 230-248
Pawnbrokers.. 249-290
Peddlers.. 291-299
Ferries.. 300-305
Billiard Tables.. 306-316
Powder (sale of) and Magazines.. 317-337
Circuses and Manageries.. 338-341
Fees and Duties on Licenses.. 342

PART III. — *Special Provisions.*

Inspection by Collectors.. 343-344
Application of Revenue.. 345-347
Collectors' Deputy.. 348
Collectors' Salary and Travelling allowance.. 349-350
Publication of Pamphlets.. 351
Crown Privilege.. 352
Schedule and Forms.. 353
Transitory Provisions.. 354-360

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Table of Contents of the Quebec Election Act, 1895

	Articles.
Preliminary Provisions and Interpretations	1-7
Qualifications of an Elector	8-12
Persons who cannot be Electors	13-16
Preparation of List of Electors	17-31
Examination and putting of List into force	32-45
Appeal to a Judge	46-62
Voting Subdivisions	63-67
Holding of Elections	68-79
Returning-Officers and others	80-81
Procedure on Receipt of Writ of Election	82-84
Election Clerk	85-88
Polls	89-91
Proclamation of Election	92-99
Nomination of Candidates	100-119
Qualification of Candidates	120-121
Deputy Returning-Officers	126-140
Poll-Clerks	140-145
Voting	146-180
Counting Ballot-Papers	181-191
Close of Election	192-203
Recount before Judge	204-212
Duties of Election Officers	223-233
Peace and Good Order	234-250
Special provisions for Gaspé	251
Corrupt Practices, etc	252-288
Election Expenses	289-309
Offences and Penalties	310-311
Prosecutions	312-325
Fees and Expenses	326-330
Final Provisions	331-332
Repeal and coming into force	333-335

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Table of Contents of Chapter relating to Jurors and Juries

ARTICLES.

QUALIFICATION AND DISQUALIFICATION OF JURORS:

Persons qualified to be Grand Jurors.. 2618
Persons qualified to be Petit Jurors.. 2619
Persons not qualified to be Jurors.. 2620
Persons exempt from being Jurors.. 2621

EXTRACTS FROM VALUATION ROLLS CONTAINING THE NAMES OF PERSONS QUALIFIED TO BE JURORS.. 2622-2632

LISTS AND PANELS OF JURORS:

Lists made by Sheriff.. 2633-2637
Revision of Jury Lists.. 2638-2647
Panel of Jurors.. 2648-2655

SUMMONING OF JURORS:

In Criminal Cases.. 2656-2670
In Civil Cases.. 2671

Allowance to Jurors.. 2672

Penalties.. 2673-2677

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A MUNICIPAL CALENDAR

BASED UPON THE PROVISIONS OF THE MUNICIPAL CODE.

JANUARY

MUNICIPAL ELECTIONS.—These take place on the second Monday of January at 10 a. m. (Art. 292.)

Within the three days next after the close of the election, the presiding officer must give special notice of election to each of the councillors elected. (Art. 302.)

Within the eight days next after the close of the election, the presiding officer must make the result of meeting known to the Warden or Secretary-Treasurer of the county council. (Art. 303.)

If a poll has been held, he sends the poll-books to the office of the local council within the same delay of eight days. (Art. 304.)

THE MAYOR.—Is elected at the first meeting of the Council. (Art. 330.)

The Secretary-Treasurer must notify the Warden of the mayor's election without delay. (Art. 331.)

MUNICIPAL REPORTS.—Must be made annually to the Provincial Secretary. (Art. 168.)

LANDS TO BE SOLD FOR TAXES.—Secretary-Treasurer makes list before the 8th of the month. (Art. 998.)

SECRETARY-TREASURER.—Must be named within 30 days after new councillors take office. (Art. 142.)

Renders annually during this month detailed account of receipts and expenditures. (Art. 166.)

PROVINCIAL REGISTRAR.—Transmits annually during the course of this month to registrars and secretary-treasurers of counties interested, list of lands for which lettere-patent have been issued during the preceding year. (Art. 715.)

AUDITORS.—Examine accounts and report before the 25th of the month.

FEBRUARY

VALUATION.—Valuation Roll in the county of Gaspé is made. (Art. 716.)

MARCH

AUDITORS.—Every municipal council is bound to name one or two auditors in the month of March of each year. (Art. 173.)

COUNTY COUNCILS.—Meet on the second Wednesday of March, June, September and December (art. 256), and appoint Delegates (art. 261), Valuators, Road Inspector, Rural Inspector, etc. (art. 365.)

WARDEN.—Election of. (Art. 248.)

DELEGATES.—Appointed now or at special session. (Art. 261.)

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SALE OF LANDS.—First Wednesday of March. (Art. 998.)
ELECTORAL LIST.—Prepared during first fifteen days (59 Vic., ch. 9, s. 17.) See sections 18 to 45 of same statute for duties of Secretary-Treasurer and Council.

MAY

COUNTY COUNCIL TAX.—Apportionment before 15th. (Art. 940.)
RAILWAY RETURNS OF REAL ESTATE. (Art. 720.)

JUNE

COUNTY COUNCIL.—Meets second Wednesday.
ROADS.—Inspector visits, between first and fifteenth, and reports thereon. (Art. 404.)
WEEDS.—To be cut on roads between 20th June and 10th July.
VALUATION.—Roll made triennially in June and July. (Art. 716.)
WATER-COURSES.—Must be kept in good order between 1st June and 31st October (art. 875) and visited by rural inspector (art. 876.)
MUNICIPAL DEBTS.—Annual compilation by Provincial Secretary.

JULY

VALUATION ROLL.—To be completed (art. 716); and revised (art. 746); notice by the Secretary-Treasurer (art. 732); revised by Council (art. 734); transmitted to County Council (art. 739.)

SEPTEMBER

COUNTY COUNCIL meets second Wednesday. (Art. 256.)
VALUATION ROLLS.—Examined and revised by County Council (art. 740); revision of by local councils in Gaspé, Rimouski, Kamouraska, Montmagny, Chicoutimi and Saguenay (art. 746*a*)

OCTOBER

MUNICIPAL ROADS.—Visited by road inspector between 1st and 15th October.
COLLECTION ROLL.—Prepared by Secretary-Treasurer. (Art. 954.)
REPAIRS ON BY-ROADS.—Work given out by tender by Inspector of Roads. (Art. 828.)

NOVEMBER

ARREARS OF TAXES.—Statement prepared by Secretary-Treasurer (Arts 371 and 372.)

DECEMBER

ARREARS OF TAXES.—Statement sent to County Council by Secretary-Treasurer. (Art. 373.)
CLEARANCES.—Demand in writing for following year. (Art. 417.)
FENCES.—Same rule as to clearances. (Art. 426.)
WINTER ROADS.—Marked out before 1st of December. (Art. 832.)
COUNCILLORS.—Draw lots as to who shall retire.
COUNTY COUNCIL.—Second Wednesday. (Art. 256.)

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LIST OF CASES CITED

A

	ART.
Allard *vs.* Charlebois	346
Allen and Corporation of Richmond	810
Angers pro Regina *vs.* La Cité de Montréal	628
Archambault *vs.* Corporation de la Ville des Laurentides	4
Archambault *vs.* Corporation of Longue-Pointe	491
Archambault *vs.* Corporation of St. Francis d'Assisi of Longue-Pointe	475, 699
Armstrong and La Société de Construction	1019
Ashley *vs.* City of Montreal	508
Asselin *vs.* Corporation of Ste. Béatrix	1046
Atkin and The City of Montreal	1019
Atkinson *vs.* Couture	891
Aubry *vs.* Genest	453
Auclair *vs.* Poirier	346, 357
Auer and City of Montreal	583
Aylwin *vs.* City of Montreal	4

B

Bachand *vs.* Corporation of St. Theodore d'Acton	4
Bagg *vs.* Village of St. Louis	365
Bain and The City of Montreal	955
Baldwin *vs.* Corporation of Barnston	793
Ball *vs.* Corporation of County of Stanstead	758
Balthazard *vs.* Brodeur	346
Barbeau *vs.* the Corporation and the County of Laprairie	100, 870
Barrette *vs.* Parish St. Bartholemew	698, 887
Barrette *vs.* The School Commissioners of the Parish of St. Columban	375
Bartley, Plaintiff and Boon, Defendant, and Armstrong, Opposant *afin d'annuler* and Bartley, contesting and Armstrong, Plaintiff in guarantee, and Corporation of County of Beauce and Corporation of Township of Linière, Defendant in guarantee	1015, 1019
Batchelor and Corporation of township of Stanbridge	794
Beard *vs.* Corporation of Stanstead	615
Beaubien *vs.* Beland	205
Beaucage and Corporation of Deschambault	793
Beauchemin *vs.* Corporation of Nicolet	582
Beauchemin *vs.* Hus	100, 357
Beaudry *vs.* Beaudry	796
Beaulac *vs.* Atkinson	1046
Beauport *vs.* Corporation of Coaticook	793
Beauvais *vs.* Coté and Corporation of Hochelaga	716
Bédard *vs.* Municipality of de Lorimier and Bayard *et al*	283
Beech *vs.* City of Montreal	788
Bélair *vs.* The Royal Electric Co	135
Bell and Corporation of Quebec	4, 963
Belzil *vs.* The Corporation of Trois-Pistoles	283, 335

Digitized by Google

	ART.
Bérard dit Lépine and Corporation of County of Berthier	885
Bernatchez and Hammond	310
Bernier *vs.* Corporation of Quebec	793
Berthiaume *vs.* Pilon	346
Bézières and Turcotte	310
Bibeau *vs.* Corporation of St. François du Lac	793
Bienvenu and Corporation of Shefford County	1022
Bisson *vs.* Mayor, etc., of Montreal	698
Bissonnette *vs.* Nadeau	289, 346
Blain and the Corporation of the Village of Granby	963, 1019
Blanchet *vs.* City of Montreal	793
Boileau *vs.* Corporation of the Parish of Ste. Genevieve	746*a*
Boileau *vs.* Proulx	16, 303, 309
Boissonnault *vs.* Couture	208, 348
Bossé *vs.* Corporation of County No. 1 of Chicoutimi	932
Bothwell *vs.* Corporation of Wickham West	758, 761, 790, 793
Bouchard and Corporation of Dorchester County	794, 1061, 1064, 1067
Bouchard *vs.* Bélanger	205
Bouchard *vs.* Gilbert	1046
Boucher *vs.* Mayor and Aldermen of Montreal	475
Bouliane *vs.* Corporation of Pointe-au-Pic	707
Bourassa and Aubry	351, 357
Bourbonnais *vs.* Carrière	707
Bourbonnais *vs.* Filiatrault	127, 339, 346, 708
Bourgeault *et al.* and Dalpé	351, 352
Boutelle *vs.* Corporation of Danville	793
Bouvier *vs.* William, alias Gagnon	283
Bragg *vs.* Williams	312
Bransdon *vs.* City of Montreal	793
Brault *vs.* Corporation of Quebec	793
Breton *vs.* Corporation St. Michel	405, 492
Brisebois *vs.* Corporation Roxton Falls	712, 718, 734
Brosseau *vs.* Brosseau	432
Brosseau *vs.* Corporation of St. Lambert	454
Brousseau and Brouillet	352
Brown *vs.* City of Montreal	4
Brown *vs.* Sexton	508
Bruneau *vs.* Corporation of St. Constant	776
Brunelle and Brosseau	351
Brunet and Corporation of Hochelaga County	1019
Brunet and Shannon	1019
Brunet *vs.* Brault	805
Brunet *vs.* Corporation Village of St. Louis	4, 526
Bureau *vs.* Menier	309
Bureau *vs.* Normand	309, 346
Burroughs *vs.* Barron	357

C

Callaghan vs. Corporation of St. Gabriel W	200
Cadot *vs.* Pelletier	291
Campeau *vs.* Grosboillot	283
Campeau *vs.* Monette	120
Canadian Pacific Railway Co. *vs.* Allan *et al*	746*a*
Canadian Pacific Railway *vs.* Corporation N.-D. de Bonsecours	22, 875
Canadian Pacific Railway *vs.* Corporation of Verdun	942*a*

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ART.
Cantwell *vs.* Corporation of Châteauguay County.. 1067
Carrier *vs.* Corporation of N.-D. de la Victoire.. 914
Cassidy *vs.* The City of Montreal.. 962
Cassils *vs.* City of Montreal.. 907
Caya *vs.* Pellerin.. 1010
Central Vermont Ry. *vs.* Town of St. John.. 709
Charland *vs.* Corporation of Wotton.. 312
Charron *vs.* Corporation of Parish of St. Hubert.. 793
Child *vs.* The City of Montreal.. 750
City of Montreal *vs.* Bronsdon.. 962
City of Montreal *vs.* Drummond.. 907
City of Montreal *vs.* Lyster.. 962
City of Montreal vs. Robertson.. 948
City of Montreal *vs.* Rector, etc., Christ Church Cathedral.. 712
City of Montreal *vs.* Seminary of St. Sulpice.. 19
City of Montreal *vs.* Sharpley.. 605
City of Quebec *vs* .Morrin College.. 712
City of Quebec *vs.* Olivier.. 668
City of Sorel *vs.* Vincent.. 638
Cleve *et vir vs.* Corporation of Richmond.. 698
Clifford and Germain.. 1006
Commissioners of St. Gabriel *vs.* Congregational Sisters.. 712
Community of Sisters *vs.* Corporation of Waterloo.. 712
Corbeille *vs.* Corporation of St. Jean-Baptiste.. 508
Corporation of Acton Vale and Felton.. 951
Corporation of Argenteuil *vs.* Corporation of Lachute.. 515
Corporation of Arthabaska County *vs.* Barlow.. 1015
Corporation of Arthabaska *vs.* Patoine.. 698
Corporation of Arthabaska *vs.* Potvin.. 19
Corporation of Belœil and Préfontaine.. 824
Corporation of Berthier and Guevremont.. 870
Corporation County of Drummond *vs.* Laferte.. 925
Corporation County of Drummond *vs.* Quesnel.. 1026
Corporation County of Hochelaga *vs.* Laplaine *et al*.. 807
Corporation County of Richelieu and City of Sorel.. 514
Corporation County of Verchères *vs.* Corporation Village of Varennes 535
Corporation of Chambly *vs.* Lamoureux.. .. ..100, 943, 1077
Corporation of Chambly Village and Scheffer.. 1019
Corporation of Champlain *vs.* Levasseur.. .. ..381, 806
Corporation of Clarenceville and Corporation of the County of Iberville.. 758
Corporation of County of Berthier and Guevremont.. 885
Corporation of County of Portneuf *vs.* Larue.. 932
Corporation of County of St. John *vs.* Corporation of Parish of Laprairie.. 775
Corporation of County of Yamaska *vs.* Durocher.. 932
Corporation of the County of Arthabaska and Patoine.. 758
Corporation of the Co. of Pontiac *vs.* the Pontiac Pacific Junction Railway Co.. 249
Corporation of the County of Verchères *vs.* Village of Varennes.. .. 100
Corporation of Dorchester *vs.* Collet.. 902
Corporation of Drummond County *vs.* Corporation of Parish of St. Guillaume.. 1077
Corporation of Eton and Rogers.. 793
Corporation of Freligsburgh *vs.* Davidson.. .. ..100, 712, 951
Corporation of Granby *vs.* Corporation of Shefford.. .. ..698, 758

Digitized by Google

	ART.
Corporation of Grantham *vs.* Ward	100, 1077
Corporation of Hochelaga *vs.* Corp. of Cote St. Antoine	490
Corporation of Hochelaga County and the Corporation of Côte St. Antoine Village	938
Corporation of Huntingdon *vs.* Moir	561
Corporation of Ile Bizard *vs.* Poudrette	100, 742
Corporation of Ireland Nord *vs.* Mitchell	951
Corporation of Kingsey Falls *et al.*, and Caya *et al*	806
Corporation of L'Assomption *vs.* Baker	492
Corporation of Laval and Moore	856
Corporation of l'Avenir and Duguay	775
Corporation of La Visitation du Sault-au-Récollet *vs.* The Corporations of Hochelaga and Jacques-Cartier	794
Corporation of Limoilou and Seminary of Quebec	712
Corporation of Maskinongé County and Grenier *et al*	809*a*, 814
Corporation of Mégantic *vs.* Corporation of Nelson	707
Corporation of Melbourne and Brompton Gore *vs.* Main	159
Corporation of Missisquoi County and Corporation of the Parish of St. George of Clarenceville	939, 941
Corporation of Montreal *vs.* Contant	961
Corporation of Montreal *vs.* Doolan	668
Corporation of North Ireland *vs.* Mitchell	401
Corporation of Point Gatineau *vs.* Hanson	457
Corporation of Portneuf County *vs.* Dion	951, 961
Corporation of Parish of St. Alexandre *vs.* Mailloux	266, 274
Corporation of the Parish of St. André and Corporation of Argenteuil County	939
Corporation of the Parish of St. André Avellin and Corporation of Township of Ripon	799, 1061
Corporation of Parish of Ste. Anne de Bout de l'Ile *vs.* Reburn	878
Corporation of the Parish of Ste. Brigide and Murray	814, 962
Corporation of the Parish of Ste. Genevieve *vs.* Legault	758
Corporation of Parish of St. Guillaume *vs.* Corp. of Drummond Co.	951
Corporation Parish of St. Jerusalem *vs.* Corporation of Argenteuil	535
Corporation of Parish of St. Luke *vs.* Wing	775
Corporation of the Parish of Ste. Philomene *vs. the* Corporation of the Parish of St. Isidore	262
Corporation of the Parish of Pointe-aux-Trembles and Corporation of Hochelaga County	1067
Corporation of Parish of St. Telesphore *vs.* Marleau	799
Corporation of Quebec and Howe	793
Corporation of Quebec *vs.* Piché	1060
Corporation of Richelieu *vs.* City of Sorel	515
Corporation of Rimouski *vs.* Ringuet	705
Corporation of Sherbrooke and Dufort	793
Corporation of Sherbrooke *vs.* Short	793
Corporation of Ste. Agathe and the board of delegates of Mégantic and Lotbinière Counties	794
Corporation of Ste. Anne de Bellevue *vs.* Reburn	1061
Corporation of St. Alexander Parish, appellant, and Mailloux	1067
Corporation of St. Ambroise *vs.* Godin	582
Corporation of St. Barbe *vs.* the Corp. of the Co. of Huntingdon	100
Corporation of St. Christophe of Arthabaska and Beaudet	835
Corporation of St. Fortunat of Wolfeston *vs.* Rainville	1067
Corporation St. Gabriel West *vs.* Holton	526
Corporation of St. Jerusalem d'Argenteuil *vs.* Corp. of Argenteuil	535

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	ART.
Corporation of St. Joseph de Lanoraie *vs.* Picard	508, 579
Corporation of Ste. Louise *vs.* Chouinard	799
Corporation of Ste. Marguerite *vs.* Migneron	4, 16, 810*a*
Corporation of Ste. Martine *vs.* Henderson	4
Corporation of St. Mathias *vs.* Lussier	100
Corporation of St. Maurice *vs.* Dufresne	100
Corporation of St. Pascal *vs.* Ward	583
Corporation of Ste. Philomene *vs.* Corp. of St. Isidore, 925, 1061,	1064, 1067
Corporation of St. Romuald *vs.* Corporation County Levis	530
Corporation of St. Romuald *vs.* McNaughton	209
Corporation of Ste. Rose Village and Dubois	825
Corporation of St. Valentin *vs.* Comeau	527
Corporation of Tingwick and Grand Trunk Ry. of Canada	793, 858
Corporation of Three-Rivers *vs.* Suite	561
Corporation of township of Acton *vs.* Fulton *et al*	962
Corporation of the township of Compton *vs.* Corp. of Compton Co	941
Corporation of township of Douglass and Maher	793
Corporation of township of St. Edwidge *vs.* James Foy	885
Corporation of Township of Granby and Corp. of Shefford Co	758, 938
Corporation Township of Nelson *vs.* Corporation Co. of Megantic	755
Corporation of Township of Nelson *vs.* Lemieux	902
Corporation Township of South Ireland *vs.* Larochelle	530, 793
Corporation of township of Wendover and Simpson *vs.* Tourville,	401, 697
Corporation of the Village of Bienville *vs.* Gillespie *et vir*	961
Corporation of the Village of Chambly Bassin *vs.* Scheffer	955
Corporation of the Village of Varennes and Corp. of Co. of Vercheres	1067
Corporation of trustees of Cote St. Paul and Brunet	1019
Corporation of Village of Chambly Bassin and Scheffer	1015
Corporation of Village Lauzon *vs.* Boutin	582
Corporation of the Village of de Lorimier *vs.* Beaudoin	649
Corporation of the Village of Ste. Genevieve *vs.* Charant	705
Corporation of Vercheres *vs.* Corporation of Varennes	537
Corporation of Verdun *vs.* Protestant Asylum for the Insane	712
Corporation of Waterloo *vs.* Community Jesus Mary	495
Corporation of Waterloo *vs.* Girard	625
Corporation Village of Delorimier *vs.* Bedard	120
Corporation Village of Point Gatineau *vs.* Hanson *et al*	495
Corporation Village of Verdun *vs.* Congregational Sisters	712
Corporation of Yamaska County *vs.* Durocher	810*a*
Corriveau *vs.* Corporation of St. Valier	453, 542
Coté *vs.* Corporation of N. D. de la Victoire	902
Coté *vs.* Corporation of St. Augustin	817, 925
Coté *vs.* Levine	346
County of Arthabaska *vs.* Patoine	100
County of Arthabaska *vs.* Potvin	100
Coutlée *vs.* Corporation of Joliette County	925
Covey *vs.* Corporation of County of Brome	561, 1087
Craig *vs.* Corporation of Leeds	4
Cramp *vs.* The City of Montreal	156
Crebassa *vs.* Peloquin	349
Croteau *vs.* Corporation of St. Christophe of Arthabaska	612

D

Dagenais *vs.* Corporation of County of Huntingdon	794
Daigneau *vs.* Corporation East Farnham	527

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	ART.
Danjou *vs.* Marquis	100
Daoust and Proulx	1042, 1087
Darling and Reeves	1023
Davidson *vs.* Meloche	753
Davignon *vs.* Corporation of Stanbridge Station	793
Debussat *vs.* Larose	791
De Bellefeuille *vs.* The Municipality of St. Louis de Mile End	4
Dechene vs. Fairbairn	200, 734
Delage *vs.* Germain	203, 346
Delorme *vs.* County of Berthier	35
Deschenes *vs.* Corporation of St. Mary	782
Desjardins *vs.* Tweedie	291, 346, 352
Desmarteau and Daigneault	352
Desroches *vs.* la Corporation de St-Bazile le Grand	135, 509
Desy *vs.* Blair	1029
Dolbec and Portelance	310
Dorion *vs.* Corporation of the Parish of St. Joseph	902
Dorion *vs.* Seminary of St. Sulpice	824
Dostaler *vs.* Coutu	357
Doyon *vs.* Corporation of Parish of St. Joseph	902
Doyon *vs.* Stewart	262
Drouin *vs.* Gosselin	1046
Dubois *vs.* Corporation of Acton Vale	489, 955
Dubois *vs.* Corporation of Ste. Croix	793, 826
Dubuc *vs.* Fortin	337
Ducharme *vs.* The Corporation of the County of Joliette	925
Duclos *vs.* Corporation of Township of Ely	788
Dufresne *vs.* McCrea	793
Duhaine *vs.* Corporation of Parish of St. François du Lac	100
Dulude *vs.* Huneau	348
Dumaine *vs.* Corporation of Montreal	159
Dupras *vs.* Corporation of Hochelaga	4, 902
Dupuis *vs.* Corporation of St. Isidore	856
Dupuis *vs.* Corporation of St. Charles	794, 802
Dureault *vs.* Corporation of Tingwick	794
Duteau *vs.* Marier	796
Duvernay *vs.* Corporation of St. Barthelemi	4

E

Edson *vs.* Corporation of Hatley	561
Ex-parte James Armstrong, petitioner	963
Ex-parte Lalonde, petitioner on *certiorari*	1078

F

Faucher *vs.* Dumoulin	155
Ferland *vs.* Morrissette	1046
Filiatrault and Corporation of the Parish of St. Zotique	743
Filiatrault *vs.* Corporation Coteau Landing	707
Filiatrault *vs.* Methot	19
Fiset *vs.* Fournier	100, 346, 357
Flynn *vs.* Lamb	19, 283
Foley and City of Montreal	793
Forget *vs.* City of Montreal	793
Fortier and Blouin	351

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	ART.
Fortin and Truchon	750
Fournier dit Prefontaine *vs.* Corporation of Chambly	514, 515, 892
Fraser *vs.* Buteau	349

G

Gadbois *vs.* City of Montreal	793
Garand *vs.* Proulx	401
Gaudet *vs.* Corporation of Chester West	793
Gaudry *vs.* Daze	205
Gauthier *et al. vs.* Corporation of St. Henri de Mascouche *et al.*	262, 266
Gauthier *vs.* Chevalier	135, 291
Gauthier *vs.* Municipality of Village of Mile End	291, 793
Gauthier *vs.* The City of Montreal	914
Globensky *vs.* Champagne	296
Gifford *vs.* Germain	158, 371, 1015
Giguère *vs.* Corporation of township of Chertsey	793, 858
Gilligan *vs.* City of Montreal	793
Girard and Corporation of Arthabaska County	100, 810, 895
Girard *vs.* Rousseau and The City of Montreal	283
Giroux and Corporation of St. Jean Chrysostome	1071
Giroux *vs.* Corporation Coteau Landing	492
Godbout *vs.* Corporation of St. Damien de Buckland	907
Goulet *vs.* Corporation of St. Marthe	489, 755, 782, 858
Goupille and Corporation of Township of Chester East	824
Graham *vs.* Morrissette	1046
Grantham and Couture	4
Gratton *vs.* Corporation of the Village of Ste. Scholastique	743
Gravel and Corporation of Laval County	793
Green and vir *vs.* The City of Montreal	962
Grenier *vs.* Lacourse	100, 955
Grenier *vs.* The Mayor, etc., of Montreal	793
Guillaume alias Gagnon *vs.* Corporation of St. Luce	100
Guillaume *vs.* City of Montreal	793
Guilbault *vs.* Canadian Pacific Railway Co	420
Gundlack *vs.* City of Montreal	788

H

Haight *vs.* City of Montreal	712
Hall *vs.* Corporation of City of Levis	902
Hamel *vs.* Corporation of the Parish of St. Jean Deschaillons	582
Hamel *vs.* Corporation of Ste. Emelie	793
Hamel *vs.* Corporation of St. Pie	750, 826
Hamilton and Brunet	355
Hanfield *vs.* Bienvenu	425
Hart *vs.* Corporation of County of Missisquoi	561, 1087
Hebert and Frechette	352
Hickey *vs.* Tansey and Kinsella	346
Hogan *vs.* City of Montreal	712, 948
Holt *vs.* Meloche	425
Holton *vs.* Aikens	19, 810
Holton *vs.* Callahan	810, 902
Hough *vs.* The South part of township of Ireland	750, 796
Houle *vs.* Martin	1046

Digitized by Google

	ART.
Hughes *vs.* Corporation of Village of Verdun	908
Huneau *vs.* Magnan	310, 314
Hunter and City of Montreal	793
Huot *vs.* Corporation of County of Montmorency	758, 793

I

Imbeau and Corporation of Rimouski	1019
Irvine *es-qual. vs.* The Corporation of Iberville	425

J

Jobin *vs.* Corporation of Quebec County	794
Jodoin *vs.* City of Montreal	793
Jones *vs.* Corporation of the Village of Asbestos	485
Jones *vs.* Gauthier	16
Judah *vs.* Corporation of Montreal	902
Judah *vs.* The Mayor, the Aldermen, etc., of Montreal	914

K

Kelly *vs.* Corporation of the City of Quebec	793
King and Corporation of Kingsville	1071
King *vs.* Corporation of la partie nord d'Irlande	902

L

Labelle and City of Montreal	793
Labelle *vs.* Gratton	1046
Lacasse *vs.* Delorme	442, 443
Lacasse *vs.* Labonté	120, 349
Lacerte *vs.* Dufresne	100
Lachance *vs.* Corporation Ste. Anne de Beaupre	1077
Lachapelle *vs.* Lanctot	283
La Cie. du Chemin de fer des Laurentides *vs.* Corp. of St. Lin	479
Lacombe *vs.* Corporation of Hochelaga County	758, 806
Lacoursiere *vs.* the County of Maskinongé and Grenier	100
Laferte *vs.* Parish of St. Aimé and Robidoux	100
Lafond *vs.* Corporation of Iberville	489
Lahaie *vs.* McMartin	440
Laing *vs.* Rabouin	796
Lajeunesse *vs.* Corporation of St. Jerome	481
Lajeunesse *vs.* Nadeau	348
Laliberté *vs.* Corporation St. Louis de Lotbinière	1046
Lambert and Lapalisse	398, 1042
Lambert *et al. vs.* Corporation of Megantic	274, 755
Lami *vs.* Rabouin	440, 1046
Landry *vs.* Migneault	925
Lapointe *vs.* Corporation of County of Berthier	796, 882
Larand *vs.* Village of St. Jean-Baptiste	100
Laraway and Brimmer	310
Larin *vs.* Rabouin	794
Larivière *vs.* Arsenault	750
Laroche *vs.* Corporation Ste. Emelie de Lotbinière	282, 698
Latreille and Town of St. Jean-Baptiste	668

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	ART.
Laurier *vs.* Corporation of Sault au Récollet	793
Laurin *vs.* Charlemagne and Lake Ouareau Lumber Co	878
Laurin *vs.* Corporation of Parish of Sault au Recollet	793
Lavertu *vs.* Corporation of St. Romuald	750
Laviolette *vs.* Corporation of Napierville County	878
Laviolette *vs.* Thomas	668
Lavoie and Gravel	840
Lavoie and Hamelin	351
Lawford *vs.* Robertson	349, 357
Leclerc and Corporation of St. Jean Port Joli	1071
Leclerc *vs.* Corporation St. Joachim de la Pointe-Claire	200
Ledoux *vs.* Picotte	4
Leduc *vs.* Bock	346
Leduc *vs.* City of Montreal	475
Leduc *vs.* Vigneau	418
Legault *vs.* Corporation of Jacques-Cartier	450, 758
Legault *vs.* Paiement	296, 309
Legault *vs.* Piquette	308
Lemay *vs.* Corporation of Becancour	904
Lemieux *vs.* Bouchard	337
Lemieux *vs.* Cantin	134
Lemire *vs.* Courchêne	366, 420, 810
Lepine *vs.* Laurent	561
Lequin *vs.* Meigs	462
Leroux and Corporation of St. Marc	793
Les Commissaires d'école de Varennes *vs.* Théberge	712
Leveille and The City of Montreal	750
L'Huissier *et vir. vs.* Brosseau *et al*	547
Lizotte *vs.* Lalancette	310, 339
Loiseau *vs.* Lacaille	120, 126, 283
Longueuil Navigation Co. *vs.* City of Montreal	549
Lovell and Leavit	1019
Lulham and Corporation of Montréal	793

M

MacKay J. Tremblay and Roy	352
Mackay *vs.* City of Montreal	668
Mahoney and Corporation of West Templeton	825
Majeau *vs.* Corporation of Joliette	888
Mallette *et al. vs.* La Cité de Montreal	628
Manseau, appellant *vs.* Papin *et al.*, respondents, and Corporation of the County of L'Assomption, mis en cause	135, 1064, 1070
Marchand *vs.* Corporation of St. John	514
Marier *vs.* Rasconi	346
Marquis and Couillard	295, 296, 310, 349
Marry *vs.* Sexton	508
Marshall *vs.* Corporation of South Stukely	488
Martin *vs.* Corporation County of Argenteuil	157, 698
Martin *vs.* Corporation of Hull	4, 159
Martin and City of Montreal	310
Masson *vs.* Leahy	333
Masson *vs.* Seminary of St. Sulpice	734
Massue *vs.* Corporation of Parish of St. Aimé	904
Massue *vs.* Nadeau *et al*	157
Matthews, Appellant, and the Mayor, the Aldermen and the Citizens of the City of Montreal, Respondent	963

Digitized by Google

	ART.
Mayor, etc., of Montreal *vs.* Drummond	530
Mayor of Montreal and Brown *et al*	914
Mayor of Montreal and Lemoine *et al*	914
Mayor *et al.*, of Sorel, Appellants, and Armstrong, Respondent	963
McBean *vs.* Gosselin and Corporation of St. Sauveur	627
McConnell *vs.* County of Argenteuil	100
McEvilla *vs.* Corporation of the County of Bagot	758, 761
McFarlane *vs.* the Corporation of St. Césaire	981
McGinnis *vs.* Letourneau	750
McLaren *vs.* Corporation of Buckingham	100
McManamy and City of Sherbrooke	583
Melançon and Sylvestre	310
Menier dit Lagacé *vs.* Gardner	432
Mercantile Library Association *vs.* Corporation of Montreal	793
Meunier *vs.* Corporation County of Levis	1061
Mignerand alias Mayrand and Legaré	750
Mills and Corporation of town of Cote St. Antoine	793
Moffett *vs.* Corporation of Plessisville	1046
Molson *vs.* Mayor, etc., of Montreal	698
Molson's Bank *vs.* City of Montreal and Hubert	100
Mongenais *vs.* Corporation of Rigaud	617
Monpas *vs.* Corporation of St. Pierre les Becquets	794, 806, 1046
Montreal Cotton Co., Appellant, and Corporation of the Town of Salaberry, Respondent	970, 1077
Montreal O. and Occid. R. Co. *vs.* Corporation of the Co. of Ottawa	479
Morgan *vs.* Côté	746*a*, 999
Morin *vs.* Corporation of Lachine	1059
Morin *vs.* Corporation of Township of Garthby	698
Morin *vs.* Gagnon	200
Morin *vs.* Rasconi	309
Morrier *vs.* Rasconi	296, 313
Morris and City of Montreal	793
Morrison, appellant *vs.* the Mayor *et al.* of the City of Montreal	793, 914
Motz *vs.* Holiwell	526
Mullen and Corporation of Wakefield	1019
Murray *vs.* Town of Westmount	485

N

Nadeau *vs.* Corporation of St. Patrick of Rawdon	1046, 1049
Nault *vs.* Beaudet	346
Neil *vs.* Noonan	19, 750
New Rockland Slate Co. *vs.* the Corporation of Townships of Melbourne and Brompton Gore	100
Noel *vs.* City of Montreal	668

O

O'Neil *vs.* City of St. Henry	902
O'Shaughnessy vs. Corp. Ste. Clothilde de Horton, 243, 705, 794, 796, 806,	807
Ottawa Electric Co. *vs.* Hull Electric Co	454
Ouellet *vs.* The Corporation of Lachine	135
Ouellet *vs.* Corporation of St. Arsène	793

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P

	Art.
Pacaud *vs.* Corporation of Halifax	4
Page *vs.* Town of Longueuil	485
Papin *vs.* the Mayor, etc., of Montreal	308
Paquet *vs.* Corporation of St. Lambert	549
Paré *vs.* Corporation of St. Clement	793, 1046
Parent *vs.* Parish of St. Sauveur	15, 698
Parent *vs.* Patry	346
Paris *vs.* Couture	100, 126, 127, 208, 339, 346
Parish of St. George de Henriville *vs.* Lafond	100
Parish of Ste. Louise *vs.* Chouinard	698
Parish of St. William *vs.* the County of Drummond	100
Parnell *vs.* Municipality of Hatley	587
Parsons *vs.* Mayor, etc., of Sorel	712
Patrick, appellant, and Corporation of l'Avenir, respondent	793
Paterson *vs.* Corporation of Nelson	793
Pattison *vs.* Corporation of Bryson	127
Patton *vs.* the Corporation of St. André d'Acton	375
Pelletier *vs.* Corporation Village of de Lorimier	208
Perrault *vs.* Corporation of St. Alban	405
Perreault and Corporation of the Parish of St. Esprit	793
Piché *vs.* Corporation County of Portneuf	794, 1061
Pichette *vs.* Legris	126, 333
Pierce *et al. vs.* McConville	875
Pillow *vs.* the City of Montreal	596
Plante *vs.* Corporation of St. Jean de Matha	793
Plante *vs.* Rivard	465
Poitras *vs.* City of Quebec	561
Poudrier *vs.* Bonin dit Dufresne	346
Poulin *vs.* Corporation d'Aubert Gallion	492
Poulin *vs.* Limoges and the Town of Maisonneuve	205
Pratt *vs.* Charbonneau	668
Prefontaine *vs.* Ducharme	916
Prevost *vs.* Corporation of St. Jérôme	698, 707
Price *vs.* Corporation of Tadousac	725
Provost *vs.* The Corp. of the Parish of Ste. Anne de Varennes	135, 138
Pulp Company of Megantic *vs.* Village of Agnès	535

R

Racine and Renaud	350, 355
Ramage and Lenoir	310
Renaud *vs.* City of Quebec	793
Rex *vs.* Lavoie	307
Richard *vs.* Corporation of Parish of Ste. Anne de Beaupré	582
Riel *vs.* the Corporation of Lachine	807
Riendeau *vs.* Dudevoir	346
Riopel *vs.* City of Montreal	793
Rioux *vs.* the Corporation of Rimouski	100, 932, 1077
Roberge *vs.* the Corporation of Levis	939
Robert *vs* .Doutre	440, 1046
Rolfe *vs.* the Corporation of the Township of Stoke	100, 366, 725
Rouleau *vs.* the Corporation of St. Lambert	100, 120, 289, 337
Rousseau *vs.* Corporation St. Louis de Blandford	775
Ross *vs.* Parish of St. Gilles	100
Ross *vs.* the Corp. of the Parish of Ste. Clotilde de Horton	398, 401

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	ART.
Roy *vs.* City of Ste. Cunégonde and Berger	4
Roy *vs.* Corporation of St. Anselme	100
Roy *vs.* Corporation of St. Gervais	707
Roy *vs.* Martineau	420
Russell *vs.* The Queen	561

S

Sampson *vs.* County of Arthabaska	4
Sauvé and Boileau	310
Sauvé *vs.* Corporation of Argenteuil County	1087
Savaria *vs.* the Parish of Varennes	100, 110
Sawyer *vs.* Corporation of Missisquoi County	1067, 1071
Schambier *vs.* the Corporation of the Township of South Halifax	127
School Commissioners of Hochelaga Village *vs.* Hudon	746
School Commissioners of St. Roch *vs.* Seminary of Quebec	712
Seguin *vs.* City of Quebec	793
Seminary of St. Sulpice *vs.* City of Montreal	712
Senécal *vs.* Corporation of St. Bruno	793
Senécal *vs.* Corporation Parish l'Ile Bizard	100, 374
Sentenne and the City of Montreal	914
Sigouin *vs.* Viau	350
Simard *vs.* Corporation of Montmorency County	100, 939, 941, 1052
Simard *vs.* Sicard	774
Simpson *vs.* Parish of St. Malachi d'Ormstown	100, 698
Smart *vs.* Corporation of Hochelaga	561
Smith *vs.* Brownlee	447
Street Railway Co. of Quebec *vs.* City of Quebec	453
Stephens *vs.* Hurteau	205
St. Amour *vs.* Corporation of St. François de Sales	615
St. André Avellin *vs.* Township of Ripon	96
St. George *vs.* Gadoury	311
St. James *vs.* Corporation of St. Gabriel	892
Suitor *vs.* Corporation of Nelson	794, 810*a*
Surprenant *vs.* Tremblay	346

T

Taillefer *vs.* Leduc	283
Taillon *vs.* Corporation of Terrebonne	761
Terroux *vs.* the Corporation of Arthabaskaville	100
Tessier *vs.* Menier	309
Théoret *vs.* Ouimet	750
Théoret *vs.* Senécal and Demers *et al.*, mis-en-cause	746
The Queen *vs.* Corporation of the Parish of St. Sauveur	793
The Sherbrooke Telephone Association *vs.* the Corporation of the City of Sherbrooke	752
The Town of Iberville *vs.* La Banque du Peuple	4
The Turn-Pike Co. of Pointe-Claire and Leclerc	751
Therien *vs.* Corporation of Mascouche	698
Therrien and the Corporation of Limoilou	100
Therriault *vs.* Corporation Parish of St. Alexander	698
Thibaudeau *vs.* Corporation Aubert Gallion	113, 707
Thibaudeau *vs.* the Corporation of St. Thecle	135, 904
Thibault and Robinson	978*a*

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	ART.
Thivierge *vs.* Fortier	337
Town of Iberville *vs.* Jones	904
Town of Iberville *vs.* La Banque du Peuple	492
Town of Lachute *vs.* Burroughs	208, 337
Town of Longueuil *vs.* Longueuil Navigation Co	549, 709
Tremblay *vs* Board of delegates of Chambly County	1067
Tremblay *vs.* Christin	203
Tremblay *vs.* Corporation of the village of Pointe-au-Pic	562
Tremblay *vs.* Leblanc	376, 814
Tremblay *vs.* Roy	349
Trepanier *vs.* Cloutier	301
Trudeau *vs.* City of Ste. Cunégonde	793
Turgeon *vs.* City of Montreal	793
Turgeon *vs.* Noreau	335
Turner *vs.* Corporation of St. Louis du Ha! Ha!	793
Turnpike Co. of Pointe-Claire *vs.* Leclaire	479

V

Vanasse *vs.* City of Montreal	793
Vanier *vs.* Meunier	142
Venner *vs.* Archer	346
Viau *vs.* City of Montreal	668
Viau *vs.* Corporation Longue-Pointe	1061, 1067, 1073
Village of Ste. Rose *vs.* Dubois	698
Vincent and the Corporation of the County of Beauharnois	100
Vinet *vs.* Fletcher	291, 346
Vinet *vs.* Toupin	1046

W

Walsh *vs.* the City of Montreal	793
Walsh *vs.* Corporation of Cascapædiac	907
White *vs.* City of Montreal	793
Whitman *vs.* Corporation of township of Stanbridge	774
Wicksteed and Corporation of Ham North	1001, 1019
Wilson *et al.*, Appellant, and the City of Montreal, Respondent	962
Workman *vs.* the City of Montreal	156
Wurtele *vs.* Corporation of township of Grantham	1015, 1019
Wylie *vs.* City of Montreal	712

Y

Yale *vs.* Bayard	348

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ABBREVIATIONS.

C. A. or C. B. Q. or C. B. K.....Court of Appeals.
C. C.....Civil Code or Circuit Court.
C. P. C. or C. C. P.....Code of Civil Procedure.
Edw. or E.....Edward VII.
L. C. J.....Lower Canada Jurist.
L. C. L. J.....Lower Canada Law Journal.
L. C. R.....Lower Canada Reports.
M. L. R. (Q. B.).....Montreal Law Reports (Queen's Bench).
M. L. R. (S. C.).....Montreal Law Reports (Superior Court).
Q. L. R.....Quebec Law Reports.
Q. O. R.....Quebec Official Reports.
O. R.....do do
Rev. Jur. or Revue de Jur.....Revue de Jurisprudence.
R. L.....Revue Légale.
R. S. C.....Revised Statutes of Canada.
R. S. Q.....Revised Statutes of Quebec.
V. or Vic.....Victoria.

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Municipal Institutions in Quebec:

AN HISTORICAL SKETCH

BY

MR. RECORDER WEIR, D. C. L.

1. UNDER THE OLD REGIME

For the beginnings of our municipal institutions we do not need to antedate the Cession—there are no links that connect our municipal institutions with the Old Regime. Municipal institutions in Canada are the outcome of the largest possible exercise of political liberty, and are incompatible with the autocratic sway of a Colbert or a Richelieu. And yet, as municipal affairs of necessity deal with the common requirements of communities in township, village or settlement, it is manifest that even under the centralizing sway of the Old Regime, they must have possessed certain recognizable features which, if they can be traced to-day must possess interest for the student, even though they be radically different in conception and structure from those that now obtain. Many of the streets of Montreal and Quebec bear witness to the manner of life of the dwellers in those cities under the Old Regime, and any review of Canadian municipal institutions that should pass over this earlier period would be imperfect.

Samuel de Champlain who constructed the *Abitation de Québec* in 1608 informs us that he published ordinances for the good government of the Colony. M. de Montmagny, who succeeded Champlain, repaired and strengthened the defences of Quebec. He also traced a plan of the town, marking out the streets according to a system. Those who know the narrow and tortuous way in which the streets of the lower town of Quebec are grouped will conclude that this system, while not without its picturesque features, was not remarkable for symmetry. De Montmagny also erected a pillory which served for the publication and proclamation of public notices as well. The energetic Frontenac some years later, applied himself to the task of giving municipal government in Quebec. He ordered the election of three aldermen, the senior of whom was to be Mayor. One of the three was to retire annually, his place to be filled by a new election, the Governor reserving the right to approve or veto

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the same. Frontenac also, in conjunction with the chief inhabitants, framed regulations for the administration of the town, destined, as he often declared, to become the chief city of a mighty empire. Meetings were to be held semi-annually to consider matters of public welfare. Colbert, however, shattered all these fine projects and democratic germs by a sharp rebuke which seems to have been effective in its influence, not only upon Frontenac, but upon his successors. At Montreal, De Maisonneuve, as local Governor administrated local affairs in his own person. Nominally he was subject to the Governor at Quebec, but distance made him practically independent. Ten local ordinances promulgated by De Maisonneuve have been preserved ; four relate to the sale of liquor, three to the defence of the town, and the others to the construction of a church and the administration of justice. A general review of the conditions and characteristics of municipal affairs at that time can perhaps be best obtained by summarizing what is known of certain offices and customs, the names of which have come down to us.

THE SYNDIC D'HABITATION.

The Syndic d'Habitation was an official well known in France where he represented popular rights before the administrative tribunals. There are records of the election of Syndics in Quebec, Montreal and Three Rivers. These officials appear to have been entrusted with certain local authority and represented the community in its dealings with the Governors. The office did not commend itself to Colbert, who instructed Frontenac to suppress it gradually. At Montreal however, the office seems to have been one of importance. The duties of the syndic in that place were, to administer the affairs of the Island by the just employment of the money given him for its requirements, subject, however, to the approval of the local Judge and the Procureur Fiscal. He also levied taxes for the support of the garrison.

THE GRAND VOYER.

The Grand Voyer was the road surveyor under the Old Regime, and the Captain of the Militia was a sort of constable and local chief of the men available for fighting. He also acted as the deputy of the Grand Voyer whose special duties were the supervision of roads and bridges, the line of streets, buildings in danger of collapse, and like matters. This office existed long after the Cession ; and in 1777, 1778 and 1796 legislation upon roads and highways refers certain duties to an official who is also styled the Grand Voyer. Twenty-four feet was the required width of roads under the Old Regime, but the Legislative Council in 1777 enacted that thirty feet be the minimum width.

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THE CORVÉE.

The Corvée was the system under which the Seigneurs, or the community, were entitled to a certain amount of manual labour from tenants or censitaires for the maintenance of roads and bridges. It was introduced from France, and was usually stipulated for in deeds or concession. In 1716 Michel Begon, Intendant, issued an order forbidding the insertion of such stipulations in future deeds of concession. The system, however, had taken deep root and traces of it have existed until very recent times. Parliament, in 1796, sanctioned the system in an effort to improve the frightful condition of the public highways, and the Act was not repealed until 1854. (18 Vic., Cap. 100).

THE INTENDANTS.

The Intendant, however, was the official who, as the head of civil administration throughout the Colony, comprised in his own person all that is now entrusted to Mayor, Aldermen or Councils.

The ordinances of the Intendants relate to a great variety of subjects. The inhabitants were forbidden to place traps on their lands; they were ordered to erect fences. Regulations respecting negroes and salves were made. Pigs were not allowed to wander through the streets. The order of precedence in church was established to be that laid down by the Sovereign Council. The habitants were forbidden to gallop their horses and carriages on leaving church. Missionaries were authorized to receive and execute wills. A lengthy and elaborate ordinance was issued respecting the building of houses which was supplemented by another ordinance requiring builders to take their alignment from the Grand Voyer or Road Surveyor. Regulations against fire were made and against nuisances. Children and grown persons were forbidden to slide in any manner on the different hills in the City of Quebec—"ce qui expose les passants à des accidents". Weights and measures, the value of coinage, the building of churches, the observance of Sunday, the preservation of timber, seigneurial rights, the settlement of boundaries and many other matters were determined by the Intendant. He presided at meetings of merchants and traders held for the election of a Syndic; determined the limits of private lands; issued instruction of the neighbourhood for the repair or construction of a road; required the habitants to exhibit their titles upon occasion; forbade those who dwelt on farms to visit the cities without special permission, and punished all violations of his ordinances. De Tocqueville says that the Canadian Intendant had much greater power than the French Intendant. As to the power of the latter we have the testimony of the great financier, Law, that all France was really governed by its thirty Intendants. "You have neither Parliament, nor estates, nor Governors" he de-

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clared to the Marques D'Argenson, "nothing but thirty Masters of Requests, on whom, as far as the provinces are concerned, welfare or misery, planty or want, entirely depend".

PARISH DIVISIONS.

The division of the Colony of New France into parishes was effected on the 2nd of March, 1722, by an edict of the Council of State, adopting a schedule drawn by Michel Begon, Intendant. By this edict Canada was divided into what was called the Government of Quebec, with forty-one parishes; the Government of Three Rivers, with thirteen parishes; the Government of Montreal, with twenty-eight parishes. These parishes were all fully described by their boundaries. The word primarily signified ecclesiastical parishs, many of which had an anterior existance as such, but were for the first time recognized by civil authority in the Edict of 1722. The beginnings of parishes may be traced to the habitations or settlements of the Colony. The Seigneur was the social head of these communities administering justice among his censitaires in the absence of other jurisdiction, receiving their fealty and homage, mutation fines and rentes, and taking the place of the Syndic d'Habitation. No other recognition of these parishes than that of the Edict of 1722 was made by civil authority until the year 1831, when a Commission by the Legislative Assembly was appointed to establish their limits for civil purposes. The Consolidated Statutes of Lower Canada embody still later legislation on the subject; the ecclesiastical parish forming in most instances the actual boundaries of the civil parish. This illustrates the close connection which existed between the civil and religious administration of the Colony.

2. AFTER THE CESSION.

Since the Cession in Lower Canada, when the British flag replaced the standard of France upon the citadel of Quebec, the autocratic rule of Intendants ceased and the movement of a freer life was felt throughout the Colony. For three years after the capitulation, affairs municipal, as well as those of larger import, were administered by military officers. General James Murray was stationed at Quebec, General Thomas Gage at Montreal, and Colonel Ralph Burton at Three Rivers. General Murray as Governor-General administered municipal affairs with the assistance of an Executive Council composed of the local Government of Montreal and Three Rivers, the Chief Justice, the Surveyor of Customs, and eight leading residents. This council performed for Montreal and other towns the duties that now are entrusted to aldermen. Ordinances were passed relating to the baking and selling of bread, police,

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markets, roads and highways in Quebec and Montreal. For instance, in October, 1764, the Governor and Council decided that the six-penny white loaf should weigh four pounds and the brown loaf six pounds, so long as flour sold for fourteen shillings per cwt. The clerks of the place were instructed to inspect markets and bakeries once in three months at least, and to stamp and brand all weights and measures. Every loaf of bread had to be stamped with the baker's initials, and the clerks had authority to stop waggons on the streets for inspection.

On March 27th, 1766, an ordinance was passed for repairing and amending the highways and bridges in the Province, "which," said the ordinance, "for want of due and timely repairs and amendments are become impassable." In 1768, to provide against conflagrations, the Council ordered that, in Montreal and Quebec and Three Rivers, chimneys be cleaned once in four weeks during the winter time, from the 1st of October to the 1st of May. Every householder was required to be provided with two buckets for water, made either of leather or sealskin, or of canvas painted without and pitched within, and holding at least two gallons each. Every housekeeper was required to keep a hatchet in his house to assist in pulling down houses to prevent the spreading of the flames, and two firepoles of specified length and design, to knock off the roofs of houses on fire or in danger of becoming so. Every housekeeper was also required to keep on the roof of his house as many ladders as he had chimneys, so placed that easy access might be had to sweep the chimneys, or carry water up to them in case of fire.

Hay or straw in a house, ashes on a wooden floor or in a wooden bucket were forbidden under penalty. Wooden houses were thereafter forbidden, and restrictions were placed upon the use of shingles, and the manner of placing stovepipes from room to room. Overseers were appointed, and the justices were empowered to enforce penalties.

The next controlling power in municipal affairs was the Legislative Council, appointed under the provisions of the Quebec Act of 1774. This Council, which was first presided over by Guy Carleton, afterwards Lord Dorchester, whose name is preserved in the stately Montreal street that bears his name, consisted of twenty-three members. Montreal continued still to be governed from Quebec, the Council sitting with closed doors in the Castle of St. Louis, on the citadel rock, and deliberating, as the records show, with a good deal of practical wisdom. For some time after its appointment, however, municipal affairs received but scant attention owing to the excitement caused by the Quebec Act. About the same time the whole Province was agitated by the American invasion. Montreal capitulated on November 13th, 1775, Montgomery's forces marching in by the

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Recollet Gate, and himself occupying the Forretier House on the corner of Notre Dame and St. Peter Streets. Emulous doubtless of the great exploit of Wolfe, Montgomery pushed on to Quebec and on Dec. 31st made his vigorous attack upon the citadel. But ere the New Year dawned he was cold in death. His discomfited forces withdrew, leaving Montreal and the Province once more free and the Executive Council able to devise measures for good government. Amongst the municipal ordinances enacted we find regulations for markets, and penalties against buying in the roads or streets. Hunters, and butchers buying to sell again were forbidden to do so before ten in the forenoon in summer, or noon in winter, under a penalty. Provisions and provender and livestock brought by schooners or such craft could not be disposed of until an hour's notice had been given to the inhabitants by the bell-man, so that all might have equal chance in buying. (17 Geo. III, cap. 4).

In 1777 (17 Geo. 3, c. 3) the Legislative Council passed an ordinance for the better maintenance of roads, fixing the proper width of the King's Highway at thirty feet and prescribing the placing of *balizes* in winter. In 1788 another ordinance, prefaced by the usual doleful preamble about the condition of the roads, affirmed that their bad condition in winter was caused by the method of affixing sleds and carrioles to their shafts and runners, the cross-bar of the shaft collecting the new-fallen snow as it is drawn along the road, thereby forming *cahots*, the hollows of which are sometimes two feet in depth. The ordinance therefore enacts that in future all winter carriages shall have their shafts affixed according to the models to be seen at the office of the market-clerks of Quebec and Montreal.

In 1791 the Constitutional Act was passed, which divided Canada into Upper and Lower, and gave each Province Parliaments and Legislative Councils. The Parliaments continued the paternal oversight of our local affairs that the Councils had previously exercised. Every municipal statute or ordinance defined and explained the duties of the magistrates in relation to it.

In May 1796, Lord Dorchester being governor, the first provincial parliament passed a very elaborate act for making, repairing and altering the highways and bridges within Lower Canada. In Quebec and Montreal the justices of the peace were directed to divide the cities into six districts and to appoint a surveyor, overseers and assessors. Personal service or statute labour was imposed under penalty. This act was the occasion if not the actual cause of serious riots and demonstration in both Quebec and Montreal.

Incidentally a good deal of jealousy, which had been brooding between the justices and the military, culminated in an attack upon Thomas Walker, a justice who had given offence to the military. The

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affair caused great excitement at the time. It gave occasion to Chief Justice Hey to present a special report, and in 1799, in a second report, declaring that the authority given to the Justices had been too largely and too confidently entrusted to them in judicial matters. The ample powers originally intended to facilitate the course of Justice became the instruments of oppression in the hands of men who regarded the office as an opportunity for private emolument. The Chief Justice's vigorous protests procured an abridgment of the Magistrates' powers, not without loud remonstrances from the latter. As the population increased, however, a better selection was possible and the powers of local and municipal administration entrusted to them were more wisely exercised. The justices formed the local administrative body which carried into effect the ordinances of Councils or Parliaments. This is indeed the characteristic feature of the municipal administration of Montreal and Quebec from the time of the Cession until the cities obtained their first Charters in 1832. These Charters were limited to a period of four years and, owing to the disturbed condition of the country, were not renewed.

Montreal and Quebec received their second Charters in 1840, and since that time, in common with the leading towns and cities of the Province, look directly to the Legislature for any increase or modification of their corporate powers and are not governed under the provisions of a general Act as are the towns and cities of Ontario.

During the administration of the Special Council in Lower Canada, consequent upon the suspension of the Constitution, an ordinance was passed (4 Vic., 2 Cap. 4) "to provide for the better internal Government of this Province by the establishment of Local or municipal Institutions therein.' The Province was divided into Districts, each of which was constituted a body corporate with special but limited powers. It was enacted that each District should have a Warden appointed by the Governor, and Councillors elected by the inhabitant householders. Every parish and township with a population of 3,000 and upwards elected two councillors. Every parish and township having a population less than 3,000 elected one councillor, subject, however, to the Governor's proclamation in such matters. Municipal service as a councillor was compulsory under pain of a fine. One-third of the Council retired annually. Four quarterly meetings were held in the year, but special meetings might be held under the authority of the Governor, who also determined the place of meeting for each Council and appointed the district clerks and treasurers. It was required that two auditors, one named by the Warden, the other by the Council, be appointed annually. These District Councils were empowered to make by-laws for roads, bridges and public buildings, the purchase of real property, schools, assessments, penalties for refusal to take municipal office, parish

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officials and police. No by-laws for the erecting of any public work was valid without a previous estimate and report as to expenditure, and all by-laws were subject to disallowance by the Governor.

These District Councils were authorized to exercise all the powers and duties of the Grand Voyers, who were thus virtually abolished, but provision was made for indemnification of these officials. No councillor received any emoluments for his services. The Governor might dissolve any Council at pleasure, but in such case the Warden had powers to cause a new election to be held. By a special clause this ordinance was not to be construed as applying to the Cities of Quebec and Montreal. The foregoing ordinance was complementary to one which was passed at the same time by the Special Council (4 Vic., Cap. 3) "to prescribe and regulate the election and appointment of certain officers, in the several parishes and townships of this Province, and to make other provisions for the local interests of the inhabitants of these divisions of the Province." The officials mentioned in this ordinance are three assessors, one collector, one or more persons to be surveyors of highways and bridges, two or more fence-viewers and inspectors of drains and one or more persons to be pound-keepers, but certain of these offices might all be filled by one person. The control which the first of these ordinances so conspicuously reserved in the hands of the Governor was doubtless due to the troubled condition of the country and doubts as to the wisdom of entrusting larger local liberty to the District Councils. In 1845, however, this ordinance was repealed by an Act (8 Vic., Cap. 10) which constitued every township and parish a municipal corporation represented by an elected Council of seven, whose head, styled the Mayor, was also elective. Two councillors retired each year. A very considerable measure of authority was confined to the Councils in 24 classes of subjects detailed in the statute. Provision was also made for the incorporation of villages or towns. Any three landowners of a village containing sixty houses or upwards within a space of 60 arpents might requisite the Senior Justice to call a meeting to consider the advisability of petitioning the Parish Council to fix limits and boundaries for the village or town. If the decision was affirmative, the boundaries were fixed and the election of councillors and incorporation followed, the councillors electing the Mayor.

Two years later (10 and 11 Vic., Cap. 7) the parish and township municipalities were abolished and county municipalities were substituted, the Municipal Council consisting of two councillors elected by each parish and township of the county for two years, one-half retiring annually. In event of any parish or township refusing to elect their councillors the Governor was empowered to appoint them. Any town or village comprising at least forty houses within an area of not more than thirty arpents might be incorporated as a town or

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village and elect a Council of seven, the specified powers of the Council relating chiefly to fires, nuisances and matters of public order. The usual asssessors, collectors and overseers were appointed under this statute, and the office of Deputy Grand Voyer was created. The powers of the Council were not materially altered but additional powers were given which included the right to impose fines for contravention of by-laws ; to compel circus companies, showmen and liquor dealers to take out licenses ; and to contract for the maintenance of summer and winter roads. In 1850 (13 and 14 Vic., Cap. 34) Municipal Councils were permitted to amend their assessments rolls if in their opinion the valuation already made was insufficient ; they were also permitted to levy a rate of one-half penny in the pound upon the assessed value of rateable property for a general purposes. Any township containing 300 souls was by this amendment permitted to elect councillors, and to be considered a township or parish for all municipal purposes. This statute also contained provisions for the sale of lands upon which taxes were due, for the construction and maintenance of roads, bridges, fences ; or the imposing of penalties and for other matters.

In 1853 (16 Vic., Cap. 138) an Act was passed to empower the municipalities of the Counties of Two Mountains, Terrebonne, Rouville and Missisiquoi to take stock in any railroad companies for the construction of railway passing through the said counties respectively, and to issue bonds to raise funds for the payment of the same. During the same session another Act (Cap. 213) was passed extending these provisions to the Councils of all county, town and village municipalities in Lower Canada and to the taking of shares by the same in the capital stocks of railway companies. A provision in this Act, exempting by-laws for railways enterprises and investments from being submitted to the people, was repealed in 1854. By Act in 1854 (18 Vic., Cap. 13) a consolidated Municipal Loan Fund for Lower Canada, similar to one enacted for Upper Canada, was established. This fund was limited to £1,500,000 for each Province, and was managed by the Receiver-General under the direction of the Governor-in-Council. It was provided that any incorporated city, town or village might raise money on the credit of this fund for gas or water-works, drainage or roads, to an amount not exceeding 20 per cent, on the aggregate assessed valuation of the property affected by any by-laws that might be passed in any municipality.

In 1855 (18 Vic., Cap. 100) a most important and elaborate Act, The Lower Canada Municipal and Roads Act — was passed. It reformed the municipal system of the Province and established there (1) county, (2) parish and township, (3) towns and village municipalities, all of which were represented by elective Councils. The statute was amended and classified (by 197 20 Vic., Cap. 101)

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and by a latter statute (22 Vic., Cap. 101) which permitted appeals from the discussion of Councils in certain cases. This Act must be considered as the basis of the actual municipal system in operation at the present time. In 1860 (23 Vic., Cap. 61) the statute of 1855 and amendments thereto were consolidated and reproduced in the consolidated statutes of Lower Canada, chapter 24.

The foregoing statutes are the basis of the Municipal Code of the Province (34 Vic., Cap. 68, 1870) sanctioned November 2, 1871, which applies to all the territory of the Province excepting the cities and towns incorporated by special statute. This territory is divided into county municipalities which include county, village or town municipalities. The inhabitants and rate-payers of every county, country village and town municipality form a corporation or body politic which under its corporate name has perpetual succession and may exercise all the powers in general vested in it or which are necessary for the accomplishment of the duties imposed upon it. The Code recognizes municipalities in the form of parishes, townships, united township, towns, villages or counties, and contains provisions common to all these various kinds of municipalities, such as the representative and executive character of the Municipal Council, the delegation of its duties to committees of its members, the judicial revision of its resolution and by-laws, the swearing in of its members, the duties of its head, whether Mayor or Warden, the conduct of its sessions, the obligations of its officers.

Under the Municipal Code the County Council is composed of the Mayors in office of all the local municipalities in the county. Such Mayors bear the title, in Council, of "County Councillors." The head of the Council is call the Warden, in French "Préfet", and is chosen from among the members of the County Council during the month of March in each year. The ordinary or general sessions of County Councils are held on the second Wednesday in the months of March, June, September and December in each year in the chef-lieu of the county. The Board of Delegates is composed of the Wardens and two other delegates from each of the county municipalities, the inhabitants of which are interested in some work or matter which may fall within the jurisdiction of the councils of such municipalities. The Local Council consists of seven councillors elected throughout the Province on the second Monday of every January ; nominations may be verbal or written and the voting is open. In the event of the municipality failing or neglecting to fyle the required number of councillors, the Lieutenant-Governor of the Province may appoint them. The second part of the Municipal Code treats of the powers of the Municipal Council. Each one has the right to make, amend, or repeal by-laws which refer to itself, its officers, or the municipality, upon the following subjects, the government of the Council and its

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officers ; public works ; aid to colonization, agriculture, horticulture, arts and sciences ; the acquisition of property and public works ; direct taxation ; loans and issue of debentures ; a sinking fund for liquidating debts ; a census ; rewards for discoveries ; penalties and other objects.

The special powers of County Councils to make by-laws relate to the chef-lieu of the county ; the location of the Circuit Court and registry office ; roads and bridges ; fires in the woods ; indemnities to members of Council. Every by-law which orders or authorizes a loan or issue of debentures must before coming into force and effect, be approved by the electors of the municipality, when the taxable property of the whole municipality is subject to the payment of the loan or debentures, and in all cases by the Lieutenant Governor-in-Council. By-laws may be attacked on the ground of illegality by any municipal elector. All real estate is taxable except Government, religious and educational holdings and (to a limited extent) railway companies. The valuation roll is made in the months of June and July biennially, is revised by the Council and is open for inspection during a specified delay. The Municipal Code next deals with the all-important subject of roads of those persons liable to render service on roads in the absence of a *procès-verbal* or by-law ; winter roads, the line of which is marked by means of balizes of spruce or cedar ; front roads, by-roads, winter roads on rivers, municipal bridges, ferries and water-courses ; expropriations for municipal purposes ; appeals from the passing of by-laws by a rural municipality to the County Council ; the collection of taxes, municipal debts and sale of lands for taxes ; and appeals to the Circuit Court from decisions by Justices, or the County Council, in municipal matters.

The special powers of local Councils to pass by-laws relate to : public highways, roads and bridges, public places, sidewalks and sewers, ferries, plan of the municipality, sale of liquors, limitation of licenses for sale of liquors, storage of gunpowder, sale of bread and wood, personal taxes, indemnities and relief, public nuisances, decency and goods morals, public health. Town and village Councils have additional powers with regard to masters and servants, public markets, water and light. In Quebec there are 67 county municipalities named and described in the Provincial Statutes (R. S. Q. 73), which also mention the cities and towns especially incorporated. (Ibid. 75).

The Municipal Code applies to all the territory of the Province, except those cities and towns which are incorporated by special statute. By 40 Vic, ch. 29, a general statute was passed for the government of chartered towns. This and other statutes are consolidated in the revision of 1888. (Vide R. S. Q., arts. 4178 to 4640). The provisions of the first chapter unless expressly modified or

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excepted, form part of the charter of every town or city established by the Legislature, (Arts 4178-4179).

The Province of Quebec in common with her sister provinces, is fortunate in the enjoyment of the fullest possible measure of local government. The criticism occasionally heard that Canada is too much governed by Federal, Provincial and Municipal authorities is not very sound. Our vast extent of territory compels a generous concession of local powers, while the freedom and independence thus developed prove in the highest degree promotive of the comfort of our population and their attachment to their country.

AUTHORITIES:

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MUNICIPAL CODE

OF THE

PROVINCE OF QUEBEC

PRELIMINARY TITLE

Extent of the Municipal Code; Declaratory and Interpretative Provisions

1. The Municipal Code applies to all the territory of the Province of Quebec, excepting the cities and towns incorporated by special statutes.

Note.—1. The Municipal Code (34 Vic. c. 68) came into force on the 2nd of November 1871 in accordance with the terms of the Proclamation of the 26th of September preceding.

2. Special acts of incorporation have been granted to the following cities, towns and villages.

Acton (St-Nazaire d') 57 Vic., ch. 67.
Acton (St-André d') 57 Vic., ch. 68.
Acton, 53 Vict., ch. 73.
Arthabaskaville, 22 Vic., ch. 108; 51-52 Vic., ch. 33.
Aylmer, 54 Vic., ch. 84.
Bagot, 57 Vic., ch. 68.
Beauharnois, 27 Vic., ch. 24; 38 Vic., ch. 77; 47 Vic., ch. 86; 56 Vic., ch. 55.
Bedford, 53 Vic., ch. 77.
Berthier, 29 Vic., ch. 61; 35 Vic., ch. 35; 40 Vic., ch. 48; 47 Vic., ch. 88.
Buckingham, 53 Vic., ch. 74; 57 Vic., ch. 65.
Chicoutimi, 42-43 Vic., ch. 61; 57 Vic., ch. 66.
Coaticook, 51-52 Vic., ch. 90; 59 Vic., ch. 56.
Cookshire, 55-56 Vic., ch. 57.
Côteau St-Pierre, 56 Vic., ch. 61.
Côte des Neiges Ouest, 52 Vic., ch. 59.
Côte Visitation, 58 Vic., ch. 59.
Côte St-Antoine, 56 Vic., ch. 54; 58 Vic., ch. 54.
Côte St-Louis, 53 Vic., ch. 75; 55-56 Vic., ch. 55.
Côte St-Paul, 41 Vic., ch. 28; 57 Vic., ch. 64; 58 Vic., ch. 61; 60 Vic., ch. 66.
Côte St-Paul, 57 Vic., ch. 64.
De Lorimier, 58 Vic., ch. 59.
Dorion, 54 Vic., ch. 57; 56 Vic., ch. 60; 58 Vic., ch. 58.
Dorval, 55-56 Vic., ch. 60.
Drummondville, 51-52 Vic., ch. 88; 54 Vic., ch. 86.

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Farnham, 40 Vic., ch. 47 ; 49-50 Vic., ch. 52.
Fraserville, 46 Vic., ch. 80 ; 59 Vic., ch. 53.
Grand'Mère, 61 Vic., ch. 61.
Hull, 56 Vic., ch. 52; 58 Vic., ch. 53; 61 Vic., ch. 56.
Iberville, 55-56 Vic., ch. 56.
Joliette, 27 Vic., ch. 23; 39 Vic., ch. 47; 47 Vic., ch. 87.
Lachine, 36 Vic., ch. 53; 38 Vic., ch. 78; 40 Vic., ch. 27; 45 Vic., ch. 104; 48 Vic., ch. 71; 52 Vic., ch. 83; 55-56 Vic., ch. 54.
Lachute, 48 Vic., ch. 72.
Laurentides, 46 Vic., ch. 81.
Lévis, 36 Vic., ch. 60; 42-43 Vic., ch. 57 ; 50 Vic., ch. 58 ; 51-52 Vic., ch. 81; 57 Vic., ch. 61.
Longueuil, 37 Vic., ch. 49; 39 Vic., ch. 46; 44-45 Vic., ch. 75; 49-50 Vic., ch. 47; 51-52 Vic., ch. 85; 52 Vic., ch. 81; 56 Vic., ch. 56.
Lorimier, *vide* de Lorimier.
Louiseville, 54 Vic., ch. 87.
Magog, 53 Vic., ch. 79 ; 60 Vic., ch. 68.
Maisonneuve, 51-52 Vic., ch. 89 ; 56 Vic., ch. 57; 60 Vic., ch. 65; 61 Vic., ch. 57.
Montmagny, 46 Vic., ch. 84.
Montreal, 52 Vic., ch. 79; 53 Vic., ch. 67 ; 54 Vic., ch. 78 ; 55-56 Vic., ch. 49; 56 Vic., ch. 49; 57 Vic., ch. 50, 55, 56, 57; 58 Vic., ch. 50; 59 Vic., ch. 49; 60 Vic., ch. 60; 61 Vic., ch. 53.
Montreal-Ouest, 60 Vic., ch. 67.
Nicolet, 36 Vic., ch. 52; 37 Vic., ch. 44 ; 42-43 Vic., ch. 63 ; 50 Vic., ch. 61; 57 Vic., ch. 83.
Notre-Dame des Neiges, 52 Vic., ch. 85.
Outremont, 38 Vic., ch. 70.
Outremont, 58 Vic., ch. 55.
Petite Côte, 58 Vic., ch. 59.
Québec, 18 Vic., ch. 159; 19 Vic., ch. 5, 69; 22 Vic., ch. 30, 63; 25 Vic., ch. 45 ; 29 Vic., ch, 57 ; 29-30 Vic., ch. 57; 31 Vic., ch. 33; 33 Vic., ch. 46; 35 Vic., ch. 33; 36 Vic., ch. 55; 37 Vic., ch. 50; 38 Vic., ch. 74; 39 Vic., ch. 51; 40 Vic., ch. 52; 41-42 Vic., ch. 14; 45 Vic., ch. 100; 50 Vic., ch. 57 ; 53 Vic., ch. 68 ; 55-56 Vic., ch. 50; 56 Vic., ch. 50; 57 Vic., ch. 58; 58 Vic., ch. 49; 59 Vic., ch. 47; 60 Vic., ch. 59; 61 Vic., ch. 52.
Richmond, 45 Vic., ch. 103; 49-50 Vic., ch. 49; 50 Vic., ch. 59.
Ste-Anne de Bellevue, 58 Vic., ch. 56.
Ste-Cunégonde de Montréal, 53 Vic., ch. 70; 54 Vic., ch. 81; 56 Vic., ch. 53; 59 Vic., ch. 51; 60 Vic., ch. 61.
St-Germain de Rimouski, 32 Vic., ch. 71; 54 Vic., ch. 82; 56 Vic., ch. 58.
St-Henri, 42-43 Vic., ch. 58 ; 49-50 Vic., ch. 50; 51-52 Vic., ch. 87; 55-56 Vic., ch. 53 ; 57 Vic., ch. 60; 58 Vic., ch. 51; 59 Vic., ch. 52; 60 Vic., ch. 62; 61 Vic., ch. 55.
St-Hyacinthe, 24 Vic., ch. 39; 40 Vic., ch. 50; 51-52 Vic., ch. 83; 54 Vic., ch. 80; 58 Vic., ch. 52.
St-Jean, 53 Vic., ch. 71.
St-Jérôme, 57 Vic., ch. 62 et 69; 58 Vic., ch. 61.
St-Lambert, 61 Vic., ch. 60.
St-Laurent, 56 Vic., ch. 59.
St-Louis du Mile-End, 41 Vic., ch. 29.
Mile-End, 59 Vic., ch. 55; 60 Vic., ch. 64; 61 Vic., ch. 58.
St-Ours, 29-30 Vic., ch. 60.
Scotstown, 55-56 Vic., ch. 58 et 59.
Senneville, 58 Vic., ch. 60 ; 59 Vic., ch. 57.
Sherbrooke, 55-56 Vic., ch. 51.
Sorel, 52 Vic., ch. 80; 55-56 Vic., ch. 52.
Summerled, 58 Vic., ch. 57.
Terrebonne, 53 Vic., ch. 72.
Trois-Rivières, 38 Vic., ch. 76 ; 40 Vic., ch. 27 et 51 ; 41 Vic., ch. 30 ; 42-43 Vic., ch. 55 ; 45 Vic., ch. 101 ; 49-50 Vic., ch. 46 ; 51-52 Vic., ch. 80 ; 53 Vic., ch. 69; 54 Vic., ch. 79; 56 Vic., ch. 51; 57 Vic., ch. 59; 61 Vic., ch. 54.
Valleyfield, 37 Vic., ch. 48; 42-43 Vic., ch. 62 ; 46 Vic., ch. 83 ; 50 Vic., ch. 60; 57 Vic., ch. 63; 60 Vic., ch. 59.
Victoriaville, 53 Vic., ch. 78.
Waterloo, 54 Vic., ch. 85.
Westmount, 58 Vic., ch. 54 ; 59 Vic., ch. 54; 60 Vic., ch. 63.

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3 Special statutes relating to the erection of village and parish municipalities and to the division of local and county municipalities.
Arthabaska, *vide* Nicolet.
Arthabaska, (paroisse de Sainte-Victoire d') 58 Vic., ch. 78.
Aylmer, *vide* Hull.
Bagotville, 39 Vic., ch. 45.
Beaumont, 36 Vic., ch. 35.
Bolton, 40 Vic., ch. 45.
Bulstrode, 59 Vic., ch. 8.
Charlevoix, *vide* Saguenay.
Chicoutimi, 35 Vic., ch. 21.
Clifton, 59 Vic., ch. 58.
Cox, 40 Vic., ch. 43.
Doncaster, 46 Vic., ch. 46.
Dorchester, *vide* Lévis.
Drummond, *vide* Nicolet.
Grandison, 45 Vic., ch. 40.
Hull, 36 Vic., ch. 31.
Ile Bizard, 53 Vic., ch. 111.
Kingsey Falls, 50 Vic., ch. 22.
Lachine, 49-50 Vic., ch. 57.
Lac St-Jean, 55-56 Vic., ch. 45.
Laprairie, 49-50 Vic., ch. 58.
Lévis, 36 Vic., ch. 32.
Limoilou, 56 Vic., ch. 62.
L'Isle aux Lièvres, 45 Vic., ch. 42.
Malbaie, 40 Vic., ch. 44.
Metgermette, 46 Vic., ch. 39.
Montcalm, 36 Vic., ch. 34.
Montminy, 46 Vic., ch. 37.
Nicolet, 41 Vic., ch. 26.
Ottawa, 43-44 Vic., ch. 7; S. R. Q., 70.
Petit Métis, 60 Vic., ch. 70.
Pointe au Pic, 40 Vic., ch. 46.
Pointe aux Trembles, 52 Vic., ch. 95.
Pontiac, *vide* Ottawa.
Portage du Fort, 52 Vic., ch. 57.
Repentigny, 45 Vic., ch. 44.
Saguenay, 49-50 Vic., ch. 24.
Salaberry, 45 Vic., ch. 40.
St-Alphonse, 54 Vic., ch. 55.
Ste-Anne de Beaupré, 60 Vic., ch. 18.
Ste-Anne du Sault, 52 Vic., ch. 61.
Ste-Barbe, 49-50 Vic., ch. 59.
St-Benjamin, 60 Vic., ch. 17.
St-Bernard, 60 Vic., ch. 16.
St-Bonaventure, 36 Vic., ch. 37.
St-Cajetan d'Armagh, 54 Vic., ch. 56.
St-Damase, 53 Vic., ch. 4.
St-Elphège, 49-50 Vic., ch. 54.
St-Edouard de Stoneham, 44-45 Vic., ch. 32.
Ste-Edwidge de Clifton, 59 Vic., ch. 58.
St-Eugène, 42-43 Vic., ch. 45.
Ste-Eulalie, 59 Vic., ch. 8.
St-Félix du Cap-Rouge, 36 Vic., ch. 36.
St-Féréol, 60 Vic., ch. 18.
Ste-Flore, 60 Vic., ch. 20; 58 Vic., ch. 12.
St-François, 60 Vic., ch. 17.
St-Frédéric, 46 Vic., ch. 38.
St-Gabriel, 49-50 Vic., ch. 53.
St-Gabriel de Brandon, 43-44 Vic., ch. 36.
St-Georges, 60 Vic., ch. 17.
St-Grégoire de Nazianze de Buckingham, 48 Vic., ch. 38.
St-Guillaume d'Upton, 36 Vic., ch. 37.
St-Hypolite, 43-44 Vic., ch. 34.
St-Janvier de Weedon, 49-50 Vic., ch. 55; 50 Vic., ch. 23.
St-Jean-Baptiste de Québec, 49-50 Vic., ch. 44.
St-Joseph de Chambly, 43-44 Vic., ch. 35.
St-Louis, 44-45 Vic., ch. 33.
St-Louis à Montréal, 58 Vic., ch. 91.
St-Mâlo, 56 Vic., ch. 62.
Ste-Marie de Blandford, 35 Vic., ch. 20.
St-Maxime, 60 Vic., ch. 16.
Ste-Marie-Magdeleine, 42-43 Vic., ch. 44.
St-Michel-Archange, 60 Vic., ch. 72.
St-Paulin, 56 Vic., ch. 44.
St-Roch de Québec Nord, 56 Vic., ch. 52.
Ste-Rose, 41 Vic., ch. 25.
St-Samuel, 46 Vic., ch. 38.
St-Sauveur de Québec, 38 Vic., ch. 75.
St-Sévère, 56 Vic., ch. 44.
Somerset, 58 Vic., ch. 11.
Stanfold, 58 Vic., ch. 11.
Stanbridge, 52 Vic., ch. 60-62.
Tadousac, 49-50 Vic., ch. 54.
Témiscamingue, 51-52 Vic., ch. 34.
Templeton, 49-50 Vic., ch. 56.
Varenne, *vide* Repentigny.
Verdun, 60 Vic., ch. 69.
Warwick, 50 Vic., ch. 22-25.
Wolfe, 45 Vic., ch. 40.
Yamaska, 36 Vic., ch. 40.

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2. The territory subject to the provisions of the Municipal Code is divided into county municipalities.

County municipalities include country, village or town municipalities.

Note. — The province of Quebec is divided into 67 county municipalities as follows, the municipality comprising the whole county unless otherwise indicated. *Vide* R. S. Q. Art. 73.

ARGENTEUIL. — The county except the town of Lachute.
ARTHABASKA. — *Vide* 58 Vic. ch. 11.
BAGOT.
BEAUCE. — 60 Vic. ch. 16-17.
BEAUHARNOIS. — The county except the towns Beauharnois and Valleyfield.
BELLECHASSE. — 59 Vic. ch. 7 ; 61 Vic. ch. 7.
BERTHIER. — The county except the town of Berthier.
BONAVENTURE.
BROME.
CHAMBLY. — The county except the town of Longueuil.
CHAMPLAIN. — 58 Vic. ch. 12.
CHARLEVOIX. — 1. Parishes of St. Simon, St. Fidèle, St. Etienne de la Malbaie, St. Irénée, St. Agnes ; townships of Callières, Chauveau, De Sales, and the organized territory to the north of these parishes and townships in the county.
CHARLEVOIX. — 2. Parishes of St. François-Xavier de la Petite Rivière, Baie St. Paul, St. Urbain, Eboulement, St. Hilarion and the unorganized territory to the north thereof in said county.
CHATEAUGUAY.
CHICOUTIMI. — 1. That part of the county to the north, east and south-east of the townships of Labarre and Plessis except the town of Chicoutimi.
CHICOUTIMI. — 2. The portion west and south-west of the townships of Kenogami and Lartigues.
COMPTON. — The county except the township of Compton.
DORCHESTER.
DRUMMOND. — The county except the town of Drummondville, 61 Vic. ch. 8.
GASPE. — 1. That part of the county to the east of St. Maxime du Mont-Louis except the Magdalen Islands.
GASPE. — 2. The Magdalen Islands, 59 Vic. ch. 6.
GASPE. — 3. St. Maxime du Mont-Louis, Ste. Anne des Monts and St. Norbert du Cap Chat.
HOCHELAGA. — The county except Hochelaga and St. Jean-Baptiste wards in the city of Montreal, and the towns of St. Henri, St. Cunégonde, Maisonneuve and the city of Montreal.
HUNTINGDON.
IBERVILLE. — The county except the town of Iberville.
JACQUES CARTIER. — The county except Lachine.
KAMOURASKA.
LAPRAIRIE.
L'ASSOMPTION. — The county except Des Laurentides.
LAVAL.
LEVIS. — The county except the town of Levis.
LOTBINIERE.
MASKINONGE.

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MEGANTIC. — 58 Vic. ch. 11.
MISSISQUOI. — The county except the town of Farnham.
MONTCALM.
MONTMAGNY. — The county except the village of Montmagny and L'Ile aux Grues, 59 Vic. ch. 7.
MONTMORENCY. — 1. The county except the Island of Orleans.
MONTMORENCY. — 2. The Island of Orleans.
NAPIERVILLE.
NICOLET. — The county except the town of Nicolet, 59 Vic. ch. 8.
OTTAWA. — The county except Hull.
PONTIAC.
PORTNEUF.
QUEBEC. — The county except the City.
RICHELIEU. — The county except Sorel and St. Ours.
RICHMOND. — The county except the town of Richmond.
RIMOUSKI. — 1. That part of the county west of the township of Mac Nider except the town Rimouski.
RIMOUSKI. — 2. That part of the county east of Métis.
ROUVILLE.
SAGUENAY. — The county except St. Pierre de la Pointe aux Esquimaux, Escoumains and Tadousac.
SHEFFORD.
SHERBROOKE. — The township of Compton and the city of Sherbrooke except the municipality of that name.
SOULANGES.
STANSTEAD. — The county except Coaticook.
ST. HYACINTHE. — The county except the city of St. Hyacinthe.
ST. JOHNS. — The county except the town of St. Johns.
ST. MAURICE. — The county except the city of Three Rivers, 58 Vic. ch. 12.
TEMISCOUATA. — The county except the town of Fraserville.
TERREBONNE. — The county except the town of Terrebonne.
TWO MOUNTAINS. — The county.
VAUDREUIL. — The county.
VERCHERES. — The county.
WOLFE. — The county.
YAMASKA. — The county.

The following local municipalities do not form part of the county municipalities in the counties named :—

L'Ile aux Coudres in Charlevoix.

L'Ile aux Grues in Montmagny.

St. Pierre de la Pointe aux Esquimaux, Escoumains and Tadousac in Saguenay.

3. The inhabitants and the rate-payers of every county, country, village, and town municipality, form a corporation or body politic, known, as the case may be, as " The Corporation of *or* of the (*inserting here the name of the municipality as given in the first title of the first book of this code, without the words* " municipality of *or* of the.) "

Note.—See arts. 24, 34, 38, 40, 67 and 71 *post*.

4. Every such corporation, under its corporate name, has perpetual succession, and may :

1. Acquire real and personal property by purchase, donation, devise, or otherwise, and hold and enjoy or alienate the same ;

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2. Enter into contracts, transact, bind and oblige itself and others to itself within the limits of its functions ;

3. Sue and be sued in any cause and before any court ;

4. Exercise all the powers in general vested in it or which are necessary for the accomplishment of the duties imposed upon it ;

5. Have a seal, of which however the use is not obligatory. — R. S. Q. 6025.

Decisions. — 1. Municipal corporations have such powers only as are specially given to them, or are necessary for the exercise of such powers. They may be bound by quasi-contract, as other persons, and, as in the present case, may be compelled to pay for the services rendered by advocates to obtain incorporation. *De Bellefeuille* vs *The Municipality of St. Louis de Mile End.* 25 L. C. J., 18 ; 4 L. N. 52.

2. Municipal corporations have not the power to accept drafts, or make negotiable promissory notes. *Martin* vs *City of Hull*, 10 R. L., 342 ; *Pacaud* vs *Corporation of Halifax*, 17 L. C. R., 56.

The contrary has been held in *Grantham* and *Couture*, 10 R. L., 186 and 24 L. C. J., 105. *Ledoux* vs *Picotte*, 2 L. N., 37 ; *The Town of Iberville* vs *La Banque du Peuple*, 4 Q. O. R., App. 268.

3. An action for libel may be instituted against a municipal corporation. *Brown* vs *City of Montreal*, R. C., 475, and 17 L. C. J., 46.

4. A municipal corporation may compromise claims for damages made against it, and are bound by such transactions. *Bachand* vs *Corporation of St. Théodore d'Acton*, 2 R. L., 326.

5. A municipal corporation is responsible for costs incurred by it, to obtain its incorporation. *Archambault* vs *Corporation de la ville des Laurentides*, 19 R. L., 266.

6. A county council cannot bind a county to pay the costs incurred by private individuals, in enforcing the Temperance Act. *Sampson* vs *County of Arthabaska*, 14 Q. L. R., 140.

7. Municipal councils must be permitted a reasonable discretion and the Court will not interfere, when the council has so acted. *Roy* vs *City of St. Cunégonde & Berger*, 5 M. L. R., 361.

8. A municipal corporation is not a public officer, within the meaning of Art. 22 C. P. C. *Dupras* vs *Corporation of Hochelaga*, 12 R. L., 35, 5 R. L., 180 ; *Bell* vs *Corporation of Quebec*, 18 L. C. J., 182, 2 Q. L. R., 305, 17 L. C. J., 193. The contrary has been held in *Craig* vs *Corporation of Leeds*, 2 R. L., 110.

9. An advocate pleading before a municipal council is not obliged to produce a resolution of council as authorisation. *Duvernay* vs *Corporation of St. Barthelemi*, 1 R. L., 714.

10. Municipal corporations cannot, under pain of nullity, plead in any other name than that which is conferred upon them by law. *Corporation of St. Marguerite* vs *Migneron*, 29 L. C. J., 227 ; *Corporation of St. Martine* vs *Henderson*, 4 R. L., 568.

11. A municipal corporation cannot legally oblige itself to pass a by-law for the opening of a street, in consideration of land which it accepts for such purpose. If it passes such a by-law, and does not carry it into effect, it is not liable for damages. *Brunet* vs *Village of Cote St. Louis*, 9 L. N., 146.

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12. A municipal corporation which accepts a cession of land for the opening of a street, and obliges itself to open such street without delay, is liable in damages for failure to carry out its undertaking. *Aylwin* vs *City of Montreal*, 5 M. L. R., 402.

5. By-laws, resolutions, *procès-verbaux* or acts of apportionment of municipal roads, bridges or water-courses, rolls, lists, and generally all orders, respecting municipal matters in force at the time of the promulgation of this code, remain in force within the territorial divisions for which they were made, until repealed, amended or annulled under the authority of this code, save in special cases otherwise provided for.

They are subject to the application of articles 100, 461, 698, and those thereunto following; but the prescription of three months runs only from the date of the coming into force of this code.

6. Any oath required by the provisions of this code may be made before any warden, mayor, secretary-treasurer or justice of the peace, within the respective territorial jurisdictions.

Any person before whom any oath may be made is empowered and required, whenever he is called upon to do so, to administer the oath and deliver a certificate thereof to the party taking the same, without fee.

7. In any proceeding in which the rights of any municipal corporation are involved, no witness is inadmissible from the fact of his being an elector or a rate-payer of the municipality, or from his forming part of the municipal council.

8. Whenever any deposition or information is required to be given under oath, on behalf of any municipal corporation, such deposition or information may be given by any member or officer of the council.

9. Every justice of the peace and every person who refuses or neglects, without reasonable cause, to do any act or duty imposed upon him by the provisions of this code, or required of him in virtue of its provisions, incurs, over and above the damages caused, a penalty of not less than four nor more than twenty dollars, except in cases otherwise provided for.

10. The lieutenant-governor, by an order in council, may revoke any order in council made by him in municipal matters, either before or after the coming into force of this code.

11. Every person, who wilfully tears down, injures or defaces any document whatsoever posted up in any public place, under the authority of the provisions of this code, incurs a penalty of not less than one nor more than eight dollars for every offence.

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12. Whenever, according to the provisions of this code or of municipal by-laws, it is declared that any person must sign his name to any document whatsoever, such person, if he is unable to write or sign his name, must affix his mark to such document, in the presence of a witness who signs.

This article does not apply to the head of the council, nor to municipal officers who, according to the provisions of this code, must be able to read and write.

13. The forms contained in the appendix to this code suffice in the cases for which they are given. Any other form, to the like effect, may also be employed.

14. Unnecessary allegations or expressions, used in any form or in any act whatsoever, in no manner affect the validity thereof, provided that, on their being set aside as surplusage, what is left is capable of being understood in the sense intended.

15. No act connected with municipal affairs, performed by a municipal council, its officers, or any other person, is null or void solely on account of error or insufficiency in the designation of the corporation or of the municipality or of such act, or on account of insufficiency in or the omission of the declaration of the quality of such officers or person, provided no surprise or injustice result therefrom.

Note. — The name commonly given to a corporation designates and means the corporation thus named without the necessity of more ample description. R. S. Q., art. 36, s. 17.

Decision. — Error in the name of a municipal corporation in assessment and tax rolls, does not invalidate them and does not prevent the corporation from recovering taxes imposed. *Parent* vs *Parish of St. Sauveur*, 2 Q. L. R., 258.

16. No objection founded upon form, or upon the omission of any formality even imperative, can be allowed to prevail in any action, suit or proceeding respecting municipal matters, unless substantial injustice would be done by rejecting such objection, or unless the formality omitted be such that its omission, according to the provisions of this code, would render null the proceedings or other municipal acts needing such formality.

Decisions. — 1. Art. 119, C. P. C., refers only to relative nullities, and not to absolute nullities. A default to plead within the legal delays, where a corporation has taken legal proceedings, in a name which does not belong to it, does not cover this nullity. *Corporation of St. Marguerite* vs *Migneron*.

2. The necessity of the formalities imposed, by the municipal code, are left to the discretion of the Judge. *Boileau* vs *Proulx*, 2 R. C., 236.

3. The Circuit Court has a discretion to exercise in matters concerning contested elections and will not annul an election because of irregularities that do not operate any prejudice. *Jones* vs *Gauthier*, 19 Q. O. R., 100, C. C.

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17. In all cases in which it is declared by the provisions of this code that any person, to be capable of filling any municipal office, must know how to read and write, it is not sufficient that such person be only able to read print and to write or sign his name.

18. If in any article of this code, founded on the laws existing at the time of its promulgation, there is a difference between the French and English texts, that version shall prevail which is most consistent with the provisions of the existing laws.

If there be any such difference in an article modifying the existing laws, that version shall prevail, which, according to the ordinary rules of legal interpretation, is most consistent with the intention of the article.

19. The following expressions, terms and words, whenever they occur in this code or in any municipal by-laws or other municipal orders, have the meaning, signification and application, respectively assigned to them in this article, unless the context of the provision declares or indicates the contrary :

1. The word "municipality" means solely the territory erected for the purpose of municipal administration. In every municipality bounded by a navigable or floatable river, the limits of the municipality extend to the middle of such river.

2. The terms "rural municipality" or "country municipality" include and mean parish municipalities, municipalities of part of a parish, of a township, of part of a township, of united townships and generally every local municipality other than town or village municipalities.

3. The adjective "local", when it qualifies the words "municipality", "corporation", "council" and "councillor", refers indifferently to country, village or town councils, councillors, corporations or municipalities.

4. The word "parish" means any territory erected into a parish by civil authority.

5. The word "township" means any territory erected into a township by proclamation.

6. The word "district" means a judicial district established by law, and refers to the district in which the municipality is situated.

7. The word "county" means a territory erected into a county for the purposes of representation in the Legislative Assembly of the Province. If two or more counties are united to constitute an electoral division, the word "county" means each of such counties severally.

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8. The term "*chef-lieu*" ("chief place") means the locality where the county council holds its sessions.

9. The terms "Circuit Court of the county" or "County Circuit Court" mean the Circuit Court in and for the county; and if there is more than one Circuit Court in the county, they include all that are therein established.

10. The terms "magistrate's court" or "magistrate's court of the county", mean the magistrate's court established in the county by proclamation of the lieutenant-governor, and presided over by the district magistrate.

11. The words "head of the council" apply equally to the warden of a county and to the mayor of a local municipality. The terms "head of a corporation" or "head of a municipality" are also used. The person referred to by the word "head" performs his duties under the name peculiar to his office, either as mayor or as warden.

12. The term "member of the council" means the head of the council or any councillor of the municipality.

13. The term "justice of the peace" refers also to the head of the council acting *ex-officio* as justice of the peace, under article 125.

14. The word "session", employed alone, refers indifferently to an ordinary or general session and a special session.

15. The term "municipal office" includes all the duties or functions discharged either by the members or officers of a municipal council.

16. The word "appointment" means and includes every election made by the municipal electors and every appointment made by the lieutenant-governor or by the municipal council, whenever, by the terms of the context, it does not refer specially to one of these cases. This provision applies to the term "appoint" and its derivatives.

17. The term "taxable property" means and includes only the real property subject to municipal taxation, and the personal property declared taxable by article 710.

18. The word "owner" or "proprietor" means every one having the ownership or usufruct of taxable property or possession or occupying the same as owner or proprietor, or occupying crown lands under a location ticket; it applies to all co-proprietors, and to every partnership, association, iron or wooden railway company, or corporation whatsoever.

19. The word "occupant" denotes the person who occupies any immoveable under any title other than that of proprietor, tenant, or usufructuary, either in his own or his wife's name, and who dwells upon the same and derives revenue therefrom.

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19*a*. The word "tenant" includes also the person who is obliged to give to the proprietor any portion whatever of the fruits and revenues of the immoveable occupied by him, and such tenant shall, unless the tenant of a store, farm, shop or office, dwell upon such property.

20. The word "absent" denotes all persons whose domicile is without the limits of the municipality, nevertheless any person, corporation, iron or wooden railway company or any other company, which has any place of business whatever in the municipality, is deemed present or domiciled in such municipality.

21. The word "rate-payer" means any proprietor, lessee, occupant or other individual, who, by reason of the taxable property which he possesses or occupies in a municipality, is liable for the payment of municipal taxes or for the construction or maintenance of municipal works by contributions in materials, labor or money.

22. The term "municipal tax" means and includes :

All taxes and contributions in money imposed by municipal councils or under *procès-verbaux* or acts of apportionment.

All taxes and contributions in materials or labor imposed upon rate-payers for municipal works, under *procès-verbaux* or other municipal acts, and liquidated by a resolution of the council after special notice given to the rate-payers interested or by the judgment of any court.

All duties, fines or penalties declared in express terms "to be assimilated to municipal taxes" by the provisions of this code, by municipal by-laws or any other law.

23. The word "range" refers to a succession of neighboring lots usually abutting on the same line ; it means also a "concession" or a "row (*côte*)" taken in the same sense.

24. The words "real estate" or "land" mean all lands or parcels of land in a municipality, possessed or occupied by one person or by several persons conjointly, and include the buildings and improvements thereon.

25. The word "lot" means any land situated in any range as conceded or sold by the original title or by the oldest title that is to be found ; it includes any subdivisions of such land made since the said concession or sale, with the buildings and other improvements thereupon.

26. The term "municipal bridge" means any bridge of eight feet in span or more, under the management of a municipal corporation ; it does not include the bridges mentionned in article 883.

27. The word "road" includes high-roads, streets, lanes, front roads, and local or county by-roads.

28. The term "boundary fence" means the fence dividing two public or private properties adjacent one to another.

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29. The word "month" means a calendar month.

30. The expression "following day" does not mean nor include holidays, except when an act may be done upon a holiday.

31. The words "intoxicating liquors" or "strong liquors" mean all spirituous or malt liquors, all wines, and every mixture of liquors or drinks, whereof any part is intoxicating.

32. The word "bond" means and includes all debentures issued by the municipal corporations for the purpose of raising money.

33. The term "municipal code" used in any act, statute, by-law, writing, procedure, or document whatever, is a sufficient citation and designation of the Municipal Code of the Province of Quebec.

34. If the time fixed by this code for the accomplishment of any proceeding or formality, prescribed by the provisions thereof, expires or falls upon a Sunday or legal holiday, the time so fixed shall be continued to the first day following, not a Sunday or holiday. R. S. Q., 6026 ; 52 Vic., ch. 56, s. 1.

Note. — The following are non-juridical days :

1. Sundays,
2. New Year's Day,
3. Epiphany, Ash Wednesday, Good Friday, Easter Monday, Ascension Day, All Saints' Day, The Feast of the Immaculate Conception, and Christmas Day,
4. The anniversary of the birth of the Sovereign fixed by proclamation for its celebration,
5. First of July, or the second day of the month, if the first should fall upon a Sunday,
6. Such other day, fixed by Royal proclamation, or by proclamation of the Governor-General, or of the Lieutenant-Governor, as a day for fasting or thanksgiving. R. S. Q., 36 ; 56 Vic. chap. 11.

Decisions. — 1. As municipal institutions come to us from the English law, they ought to be interpreted according to that law. *Corporation of Arthabaska* vs *Potvin*, 4 D. C. A., 370.

2. A laborer employed as such for municipal purposes, is not, therefore, a municipal officer entitled to notice before being sued in damages. *Holton* vs *Aikens*, 32 L. R., 289.

3. A municipal councillor, acting as a member of a special committee, who upon the authorization of the council, makes a sidewalk on the property of the plaintiff, and who is sued in damages for an assault upon such proprietor, is entitled to a notice of the month, as provided by 22 C. P. C. *Filiatrault* vs *Méthot*, 18 L. N., 525.

4. Special taxes imposed for the construction of drains, in virtue of arts. 545 and 546 are taxes within the meaning or art. 19. *City of Montreal* vs *Seminary of St. Sulpice*, 1 M. L. R., (sec.) 450.

5. A road which is not enclosed on both sides, and which is closed by gates is not a public road. The proprietor of the land bordering on such a road may oblige his neighbor to contribute to the construction of a fence. *Neil* vs *Noonan*, 19 R. L., 334.

6. The usufructuary of real estate worth over $400 is qualified as a municipal councillor. *Flynn* vs *Lamb*. 6 Rev. de Jur., 296, S. C.

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20. Every lot or piece of land is described by its number and by the name of the range or street, or by the limits and abuttals thereof, or in the manner prescribed by a resolution of the council. In every municipality included in a registration division, in which the provisions of articles 2168 or 2176*a* of the Civil Code, respecting the plan and book of reference, are in force, the description of every lot of land is given by the corresponding number upon the plan and in the book of reference ; if the land forms part of a numbered parcel of land, it is described by declaring that it forms part of such parcel of land ; if it is composed of portions of more than one numbered parcel of land, it is described by declaring that it is so composed, and by indicating what portion of each numbered parcel of land it contains.— R. S. Q., 6027.

Note. — The description of a lot of land, by indicating its contents and the official number of the lot in the minutes or by-laws actually in force is declared sufficient, without prejudice to pending cases. 60 Vic., chap. 57, sec. 10.

21. Every iron or wooden railway company is obliged to construct and maintain fences, roads, bridges, and water-courses on the properties possessed or occupied by it in a municipality, and is subject to the provisions of the by-laws, *procès-verbaux* or other municipal enactments passed to that effect, even if such works for fences, roads, bridges and water-courses should not be of advantage to the company. R. S. Q., 6028.

22. Such company or its taxable property cannot in any manner be made liable, in virtue of *procès-verbaux* or of by-laws made under articles 528, 794, 855 and 884, for works of such nature, or any land other than that owned or occupied by it, nor can it be subjected to the imposition or payment of taxes levied for works to municipal water-courses, bridges or roads, or to contribute to the building of any iron or wooden railway in the municipality.

Should such company neglect or refuse to perform the works for which it is liable, in virtue of the preceeding article within the prescribed delay, no municipal council or officer can perform such works or cause the same to be performed, but the company is liable in addition to the damages occasioned by its neglect or refusal, to a fine of twenty dollars for each day during which such neglect or refusal continues.

Decision. — Arts. 21 and 22 of the Municipal Code apply to a railway company under the jurisdiction of the Canadian parliament. *Canadian Pacific Railway* vs *Corporation Notre Dame de Bonsecours.* 7 Q. O. R., 121, (Q. B). Confirmed by Privy Council, L. R., App. Ca. (1899), 367.

22*a*. The provisions of articles 21 and 22 also apply to federal and local government railways, whether such railways be worked by the government or by private parties. — R. S. Q., 6029.

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BOOK FIRST

ORGANIZATION OF MUNICIPAL CORPORATIONS.

TITLE FIRST

ERECTION OF MUNICIPALITIES

PRELIMINARY PROVISIONS

23. Every territory which is declared by the provisions of this code to form of itself a distinct county or local municipality, dates its formation as such municipality, under its corporate name, as soon as such territory comes within the required conditions.

23*a*. The costs incurred for the purpose of creating and organizing a new rural village or town municipality are at the charges of the said municipality. — 61 Vic., ch. 50, s. 1.

CHAPTER FIRST

ERECTION OF COUNTY MUNICIPALITIES.

24. Saving the exceptions contained in article 1081, every territory erected into a county for the purpose of representation in the Legislative Assembly of the Province, constitutes by itself a county municipality, under the name of "The municipality of the county of (*name of county*)."

A county united to another county to constitute an electoral division does not cease to form by itself a separate county municipality. — R. S. Q., 6031.

25. Nevertheless if any local municipality is situated partly in one county and partly in another, such local municipality continues to form part of the county municipality in which it was placed under the law which established it.

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CHAPTER SECOND

ERECTION OF LOCAL MUNICIPALITIES.

SECTION I.—RURAL MUNICIPALITIES.

26. Every territory which at the time when this code comes into force, has been erected in virtue of the consolidated municipal act of Lower Canada, or of any amendment, or subsequent special act, into a municipality of a parish, of part of a parish, of a township, of part of a township, of united townships or into any country municipality whatsoever, continues to form a local municipality operating under the provisions of this code, under the name indicated by the law under which it was erected, until such time as it may be otherwise directed under the authority of this code.

Corporations or municipalities which have had rights or privileges conferred on them by special and exceptional provisions of law, continue in the enjoyment of the same, except in so far as the number of councillors is concerned, which must be in accordance with article 276.

27. All other territories, except those already erected into town and village municipalities, form, at the time when this code comes into force, or thereafter, local municipalities, under the subsequent provisions of this section, if they fall within the requirements to this end necessary ; if not, they must be annexed to adjoining municipalities in the county, in virtue of the provisions of this section.

28. Every territory not erected into a local municipality or every territory of which the council is not organized, is, until it be annexed to an adjoining local municipality or until the council thereof be organized, administered and regulated by the county council and its officers, under their usual names and with the same privileges, rights and obligations, as if such council and officers were the local council and officers of such territory.

The inhabitants and rate-payers of such territory so governed by the county council and its officers are alone subject to all municipal obligations, arising either from the law or from the municipal acts in force therein, in the same manner as if such territory was organized into a municipal corporation.

§ I. — *Of Municipalities of a Parish or part of a Parish.*

29. Every territory erected into a parish, and situated entirely in one and the same county forms of itself a parish municipality, within its whole extent, save and except any parts thereof included in any township, or in any town or village municipality.

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30. Whenever a territory, not forming part of a township, or of a town or village municipality, is annexed to a parish in the county by civil authority or by the legislature, such territory, without further formality, forms part of the municipality of such parish, from the date of its annexation to the parish, and is subject to articles 43 and 44.

31. If a part only of a parish is situated in a county, this part of a parish forms, of itself, a municipality of a part of a parish, provided it has a population of at least three hundred souls.

If such part of a parish has not a population of three hundred souls, it must be annexed to an adjoining rural municipality in the county.

32. The county council may, by a resolution, after public notice to that effect has been duly given, previous to the passing thereof, and approved and published in the manner prescribed by article 41, erect into a parish municipality, under the name which belongs to it, according to the rules prescribed, any territory included in one or more townships or part of townships, whether or not erected into municipalities, and which has been constituted into a civil parish, provided that such parish contains a population of three hundred souls and is wholly situated in the county.

When a part only of such civil parish is situated in the county, such part of a parish, if it contains a population of three hundred souls, may in the same manner be erected into a municipality of part of a parish.

33. The county council may, in the same manner, annex to a parish municipality any territory situated in one or more townships or parts of townships, whether erected or not into municipalities, whether such territory has or has not been already joined to such parish for civil purposes, provided that such territory and parish be entirely situated in the same county.

34. The name of a parish municipality is "The municipality of *(name of the parish)*".

The name of the municipality of part of a parish, is "The municipality of the * * * part of the parish of *(naming the parish and substituting in place of * * * the word* North, South, East *&* West, *according as such municipality is situated in one of these directions in relation to the principal part of the parish)*".

§ II. — *Of Municipalities of a Township or part of a Township.*

35. Any territory erected into a township, situated entirely in one and the same county, and having a population of at least three hun-

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dred souls, as appears by the last census or otherwise, forms of itself a township municipality.

The secretary-treasurer of a municipality so organized shall immediately give notice of the date of such organization by publishing it in the *Quebec Official Gazette.*

A township with a population of less than three hundred souls must be annexed to an adjoining rural municipality in the county.—R. S. Q., 6033.

Decision.—1. A territory erected into a township, and situate entirely in one and the same county is thereby erected into a township, from the time that it has a population of at least 300 souls. The prefect of the county in which such township is situated may, without the authorisation of the county council, order the holding of a first general election of municipal councillors for the township. The report made by the returning officer to the prefect of the county, to the effect that an election has taken place and that a rate-payer has been named Mayor, by the councillors elected, is sufficient notice thereof. The Mayor of the council, thus elected, has the right to be acknowledged as a member of the council of the county, even by means of a writ of mandamus. The erection of a parish by resolution of the county council of a territory, including a part of a township already erected and organized as a township, and another township not yet erected into a municipality, has the effect of destroying the organization of the first township, if it does not contain 300 souls. *Delorme* vs *County of Berthier*, 19 R. L., 608.

36. Whenever any territory which does not already form part of a local municipality is annexed by proclamation to any township in the county, such territory, from the date of its annexation to the township, forms part of the municipality of such township without any other formality.

37. If a part only of a township is situated in a county, such part of a township, forms, of itself, a municipality of part of a township when it has a population of at least three hundred souls.

If such part of a township has not a population of at least three hundred souls, it must be annexed to an adjoining rural municipality in the county.

37*a*. The county council may, by resolution, erect into a municipality of part of a township, any territory containing a population of at least three hundred souls, which already forms part of a municipality of a township, of part of a township or of united townships, or of the municipalities of several contiguous townships situated in the same county, on petition signed by at least two-thirds of the electors of such territory, and by a majority of electors of the remaining portion of the said municipality ; provided that there remains in each municipality, from which such territory is detached, a population of at least three hundred souls.

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Such resolution must be preceded by a public notice given for such purpose, and be approved and published in the manner prescribed by article 41. — R. S. Q., 6034.

38. The name of a township municipality is " Municipality of the township of (*name of the township*)."

The name of a municipality of part of a township is " Municipality of the * * * part of the township of (*naming the township and substituting in place of * * * the word* North, South, East *or* West, *to suit the case*)."

That of a municipality composed of portions of several townships is " Municipality of ... (*name which is given to it by the county council*)."—R. S. Q. 6035.

§ III. — *Of United Township Municipalities.*

39. The county council may, by a resolution, sanctioned and published in the manner prescribed by article 41, unite two or more townships situated wholly within the limits of the county, to form conjointly one local municipality, provided that the population of each of these townships does not amount to three hundred souls, and that the total population of these townships united amounts to at least three hundred souls.

40. United townships form a local municipality under the name of " Municipality of the united townships of (*name of the townships*)." — R. S. Q., 6033.

§ IV. — *Annexation of a Territory to a Rural Municipality.*

41. The annexation of any territory to a rural municipality, in the cases prescribed by the provisions of the preceding paragraphs, is made by a resolution of the county council.

This resolution must be approved by the lieutenant-governor in council, and published within the fifteen days which follow the receipt of his approval, by the secretary-treasurer, in the manner prescribed for public notices, and moreover, by two insertions in one or more newspapers and in the *Official Gazette* of the province.

42. The territory thus annexed to the rural municipality becomes part of such municipality, for all municipal purposes. — R. S. Q., 6037 ; 48 Vic., ch. 28, s. 3.

43. The members and officers of the council of the municipality, to which a territory has ben annexed, in office at the time of the annexation, remain in office, and form the municipal council or are the officers of the whole municipality as constituted after the annexation.

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44. The by-laws, orders, lists, rolls or municipal acts, which governed the territory before its annexation, continue in force for such territory, subject, nevertheless, to the application of provisions of chapter three of this title, until repealed or amended by the municipal council ; and those which governed the municipality before the annexation do not apply to the annexed territory until they have been declared applicable to it by the same council.

Nevertheless, the by-laws herinbefore first mentioned, can neither be repealed nor amended, nor those hereinbefore last mentioned, declared applicable to such annexed territory, by the municipal councillors in office at the time of such annexation, so long as they do not fill their offices in virtue of a new appointment.

§ V. — *Separation of a Territory Annexed or United to another.*

45. If it appears by a general census, or special census or enumeration of the inhabitants, that the territory which has been annexed to a rural municipality, or united to another territory for the purpose of forming a united township municipality, contains a population of at least three hundred souls, the county council may, by resolution, divide such territory for the purpose of establishing within its original limits, a distinct local municipality, or municipalities, as the case may be, provided that the territory which remains, retains a population of at least three hundred souls.

This resolution must be approved and published in the same manner as those passed in virtue of articles 32 and 41.

46. The territory so separated forms of itself a distinct local municipality under its proper name, according to the rules already established. — R. S. Q., 6038.

47. The county council must cause a special census of the inhabitants of a territory which has been annexed or united in virtue of the provisions of this chapter, to be made by one of its officers or by a person appointed for that purpose, whenever required to do so, by at least two persons resident in such territory, and who offer sufficient security for the payment of the costs in the case mentioned in the following article.

48. If it appears from such census that such annexed or united locality does not contain a population of three hundred souls, the costs of such census must be repaid to the council by the persons who demanded the same, or by their sureties.

48*a*. Whenever there is, within the limits of a rural municipality, a group of at least sixty houses on a territory not exceeding two hundred and fifty arpents in superficies, the council of such munici-

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pality may, upon a petition signed by two-thirds of the municipal electors who are at the same time proprietors resident in the said territory, pass a by-law to define the extent and the limits of such territory, and to cause it to be known as an unincorporated village under such name, as it may deem expedient to give it.

48*b*. As soon as such by-law comes into force, the council of the municipality is vested with the same powers and authority to make by-laws with regard to such unincorporated village, as that of the council of a village municipality working under the provisions of this code, except however those conferred by articles 617 to 623*a* and 637 to 640 inclusively. — R. S. Q., 6039.

SECTION II. — OF TOWN AND VILLAGE MUNICIPALITIES.

§ I. — *Of existing Town and Village Municipalities.*

49. Every territory erected at the time when this code comes into force, into a village municipality under the authority of any statute whatsoever, continues to form a village municipality, governed by the provisions of this code.

Such village municipalities are designated and known under their corporate name, according to the provisions of the law under which they were erected.

50. The town and village municipalities specified in the two preceding articles are designated and known under the corporate name which belongs to them, according to the provisions of the law under which they were erected.

§ II. — *Erection of new Village Municipalities.*

51. Every territory forming part of a rural municipality and containing on any one of its parts at least forty inhabited houses, within a space not exceeding sixty superficial arpents, may be erected into a village municipality by a proclamation of the lieutenant-governor issued after the observance of the formalities prescribed in this paragraph.

52. The county council, on presentation of a petition signed by two-thirds of the municipal electors, who are at the same time proprietors resident in the territory which is sought to be erected into a village municipality, names a special superintendent charged to visit such territory for the purpose of ascertaining the number of houses therein built and inhabited, and to report on such petition.—R. S. Q. 6040.

53. The special superintendent, after having made oath faithfully to perform the duties of his office, gives public notice to the inhab-

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itants of the rural municipality concerned of the day and hour at which he is to commence his visit and make the examination of the territory described in the petition.

At the time and place fixed, he must give a hearing to every interested party who appears, and receive from such party any objection or opposition, whether written or verbal.

54. The special superintendent must set forth in his report to the council :

1. The number of houses built and inhabited on the territory in question ;

2. The number of houses built and inhabited, within a space not exceeding sixty superficial arpents, on any part whatsoever of the territory ;

3. A clear and precise description of the limits, which, in his opinion, should be given to the territory which is sought to be erected into a village municipality.

If the limits described in the report differ from those set forth in the petition, the special superintendent must state the reasons of such discrepancy.

55. The report of the special superintendent must be accompanied by a plan of the territory in question, distinctly showing :

1. The limits defined in the report ;

2. Those defined in the petition, if they differ from those defined in the report ;

3. Streets opened ;

4. Streets projected ;

5. Lots built upon ;

6. Lots vacant.

After having made and signed his report, the special superintendent deposits it with the plan accompanying it, together with a copy of each, in the office of the county council.

56. The secretary-treasurer must give public notice of the filing of such report to the inhabitants of the rural municipality from which it is proposed to separate the territory in question, indicating at the same time the place where communication of the report and the plan may be taken by those interested, dating from the publication of such notice.

57. The county council may reject or homologate, with or without amendment, the report of the special superintendent within two months from the publication of the notice of the filing of such report at the office of the council.

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It cannot, however, proceed to the consideration and amendment of the report without first giving public notice to the inhabitants of the rural municipality concerned, of the day and hour at which its proceedings are to commence, and after having heard all interested parties, including the special superintendent, if such hearing is required.

58. The amendments made by the county council to the special superintendent's report must be entered on the original and the copies lodged in the office of the council, or on sheets of paper thereunto annexed.

59. At the expiration of two months from the publication of the notice of its deposit, the report of the special superintendent is held to be homologated as it then is, unless in this interval it has been rejected or expressly homologated by the county council.

60. After the homologation of the special superintendent's report, under article 57 or article 59, the secretary-treasurer is bound to transmit to the provincial secretary a copy of the report and any amendments which may have been made, as well as of any other document connected with it, together with either the plan or a copy of the plan of the territory in question.

61. The lieutenant-governor may, by an order in council, approve or reject the said report with its amendment, or may modify it or amend it anew.

62. If the report is approved, with or without amendment, the lieutenant-governor issues a proclamation erecting the territory described in the report into a village municipality, and declaring its name and defining its limits.

63. The proclamation comes into force on the day of its publication in the *Quebec Official Gazette;* and two copies thereof, certified by the provincial secretary, must be sent to the office of the county council. — R. S. Q., 6041.

64. The secretary-treasurer of the county council gives public notice of the issuing of the proclamation erecting such village municipality, and transmits one of the copies of such proclamation to the mayor of the new municipality as soon as he is appointed.

65. From the date of the proclamation coming into force, the territory, as defined in such proclamation, is detached from the local municipality of which it formerly made part, and becomes a distinct village municipality under its corporate name. The remaining part of the municipality, if it contains a population of at least three hun-

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dred souls, continues to form a distinct municipality under its corporate name, the members and officers of the council then in office remain in office as if the erection of the village municipality had not taken place, the provisions of article 283 to the contrary notwithstanding.

65*a*. Every rural municipality having a population of ten thousand souls, as established by the last general census, or by a special census certified by the mayor or secretary-treasurer, may be erected into a village municipality by proclamation of lieutenant-governor in council, upon petition of the majority in value of the proprietors of the said municipality according to the valuation roll then in force, and upon a resolution of the council of the municipality, setting forth that it is in the interest of the inhabitants of the locality that such erection into a village should take place ; provided always that the territory does not exceed forty-five arpents in superficies, and that such resolution be accompanied with a plan showing the metes and bounds of the municipality.

The territory, as described in the proclamation, forms a village municipality under its own name, dating from the coming into force of the proclamation; but the councillors in office remain so until the expiration of their term, as if the erection had not taken place. — R. S. Q., 6042.

66. The by-laws, orders, rolls or municipal acts which governed the territory before its erection into a village municipality, continue in force after such erection, subject to the application of the provisions of chapter three of this title, until they are amended or repealed by the village council.

67. The name of a village municipality is, " The municipality of the village of *(name of the village)*."

§ III. — *Erection of New Town Municipalities.*

68. The lieutenant-governor in council may, by proclamation, erect a territory forming a village municipality, into a town municipality, if he deems it in the interest of such municipality and its inhabitants so to do.

69. The proclamation issued in virtue of the preceding article must be published in the *Official Gazette* of the province and comes into force on the first day of the month of January after it has issued. — A copy of it must be sent to the office of the county council, and another to the office of the council of the village municipality, which has been erected into a town municipality. — The secretary-treas-

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urer of such municipality must give public notice of the issuing of the proclamation, immediately on receipt of a copy thereof.

70. The by-laws, orders, rolls or municipal acts which governed the territory before its erection into a town municipality, continue in force after such erection, until they are amended or repealed by the town council.

71. The name of a town municipality is: "The municipality of the town of *(name of the town)*."

Note. — The Revised Statutes Arts. 4178 to 4640 contain the provisions that apply to every town corporation or municipality established by the Legislature, except as modified by special charter. These articles (4178-4640) contain substantially the Town Corporation clauses Act passed in the year 1876. (40 Vic. ch. 29, Que.)

§ IV. — *Annexation of a Territory to a Town or Village Municipality.*

72. Every territory forming part of a rural municipality, adjoining a town or village municipality, situated in the same county as such town or village, may, by a resolution of the county council, be annexed to such town or village municipality.—R. S. Q. 6043.

73. Articles 41, 42, 43 and 44 apply equally to annexations of territory made under the preceding article.

§ V. — *Annexation of a Town or Village Municipality to an adjoining Local Municipality.*

74. Every town or village municipality may be annexed to another adjoining local municipality in the county, by proclamation of lieutenant-governor, on a petition signed by at least two-thirds of the electors of such town or village municipality, as well as by two-thirds of the electors of the municipality to which such first-named municipality is sought to be annexed.

Any part of a town or village municipality may, in the same manner, be annexed to any local adjoining municipality in the county, provided there remains in the town or village municipality a territory of sixty arpents in superficial extent, containing forty inhabited houses.

Nevertheless, when a village municipality is situated partly in one and partly in another of two adjoining parishes, either of such parts of the village municipality may be annexed to the municipality of the parish of which such portion of the village municipality forms part, provided that the petition praying for such annexation be signed by all the proprietors residing in the portion which demands such separation, and provided also that there remains in the munici-

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pality of the village a territory of sixty arpents in superficies, containing forty inhabited houses. — R. S. Q., 6044.

75. Such proclamation comes into force on the first day of January following the date of its issue.

76. The territory of the town or village so annexed to any local adjoining municipality, forms part of such municipality, from the date of the coming into force of the proclamation; and if the whole of the municipality has been so annexed, it ceases from such time to form a distinct municipality. — R. S. Q., 6045.

77. The provisions of articles 43 and 44 apply also to every annexation made in virtue of article 74.

CHAPTER THIRD

EFFECT OF THE CHANGE OF THE LIMITS OF A MUNICIPALITY UPON THE OBLIGATIONS AND RIGHTS OF RATE PAYERS

SECTION I. — SETTLEMENT AND DIVISION OF JOINT DEBTS

78. The taxable property, comprised in a territory newly erected into a municipality or annexed to another municipality, or simply separated from a municipality without forming part of any other, whether by special act or under the authority of the provisions of this code, continues bound and obliged for all debts and obligations contracted before the change of limits, the separation, or the erection into a new municipality of such territory.

79. The council of the municipality from which a territory has been separated, is alone authorized and bound to settle their joint debts and obligations with the creditors. ,

But if any whole municipality which no longer forms of itself a distinct municipality is divided and must be annexed to one or more municipalities, or must form two or more new municipalities, or must be in part annexed to one or more municipalities and in part form one or more new municipalities, the only municipal council authorized and obliged to settle the joint debts and obligations with the creditors, is that which governs the territory which contains within its limits the place where the council sat at the time of such separation or division.

If, in the case of the preceding provision, the place where the council sat at the time of the division or separation was

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in a village or town municipality distinct from the divided or separated territory, the only municipal council authorized and obliged to settle the joint debts and obligations with the creditors, is that which governs the territory including within its limits the greater part of the divided or separated municipality.

80. All suits brought in reference to the settlement of such debts and obligations, may be brought in the district or in the county in which is situated the chief place of the council bound to settle such debts and obligations.

81. The settlement and division of joint debts and obligations must be based on the value of the taxable property liable for such debts and obligations, according to the valuation roll in force at the time when such limits were changed.

82. The council bound for the settlement of joint debts and obligations, and its officers are authorized: — 1. To collect, throughout the whole territory liable for such debts and obligations, the taxes imposed for the payment of the same, by the by-laws in force at the time of the change of limits; or — 2. To impose thereon by by-law, new taxes to effect the full payment of such debts and obligations, with all the same rights and powers conferred upon the council and its officers, that governed the same before the division and separation of the territory; or — 3. The municipal corporation bound for the payment of the common debts and obligations may, after three months' notice duly served, claim and exact directly from the municipal corporation, charged with the administration of any portion of territory bound for such debts and obligations, the whole share collectively due by all the proprietors or occupants of taxable property comprised in such portion of territory.

The corporation charged with the municipal administration of any such portion of territory so bound may recover from the rate-payers bound for such debts and obligations, by means of by-laws or repartitions which it makes for such purpose, the amounts which it has so paid.—R. S. Q. 6046.

83. Nevertheless, if any land liable for such taxes is not situated in the county municipality in which such council and officers have jurisdiction, such land cannot be sold in default of payment of such taxes, except within the county municipality in which it is situated; and the secretary-treasurer, entrusted with the collection of such moneys, must transmit a statement thereof, within the time required, to the secretary-treasurer of such county municipality, who must, in default of payment of the taxes for which such land is liable, proceed to the sale of the same in the usual manner.

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84. The council bound to settle the joint debts and obligations may, by mutual agreement with the council entrusted with the municipal administration of any other part of the territory liable for the payment of such debts and obligations, determine the total amount jointly due by all the owners or occupants of the taxable property comprised within such part of the territory.

This agreement is made in conformity with resolutions previously passed for that purpose by the councils interested therein, and can only include debts and obligations liquidated and demandable.

85. The share established by the deed of agreement becomes a debt demandable by the council bound to settle the joint debts and obligations, according to the terms of the agreement, of the municipal corporation whereof the council became a party to such deed, and may be recovered by the latter and its officers from the rate-payers liable for such debts and obligations, as well under the by-laws in force at the time of the deed of agreement as under new by-laws which such council may make for such purpose.

Section II. — Division of Common Property

86. Property consisting in sums of money, assets, effects, moveables or immoveables, belonging to the corporation at the time of a change of limits, or of the separation of any territory, with exception of those mentioned in the following article, must be divided in the same manner as joint debts.

87. The books, registers, plans, rolls, lists, documents, papers or records of the corporation remain the exclusive property of the council which is bound to settle the joint liabilities.

88. The council bound to settle the joint liabilities is alone authorized to collect and settle all arrears of municipal taxes and all other assets due before the change of limits, by itself or by its officers, with the same rights and powers as those conferred upon the council and officers authorized to collect and settle them before such change of limits.

89. Such council may nevertheless convey by deed of agreement to the council entrusted with municipal administration of any other part of the territory which was included in the old municipality, for the benefit of the rate-payers of such part of the territory, all arrears of municipal taxes and all other assets arising out of the taxable property included in such part of the territory ; and the council to which such conveyance was made and its officers are authorized to collect and settle such arrears and assets, with all the rights and powers possessed by the council making such conveyance and its officers.

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SECTION III. — MISCELLANEOUS PROVISIONS

90. No rate-payer of a territory detached or separated from a local municipality is obliged, in virtue of any *procès-verbal*, act of repartition, by-law or order, in force at the time of the change of limits, to perform work upon municipal roads or bridges up to that time deemed to be local, and situated in the remaining part of the local municipality from which such territory has been detached or separated.

Notwithstanding article 5, the same rule applies to the rate-payers of any local municipality from which any territory has been detached or separated respecting works of a similar nature situated within the limits of such territory. — R. S. Q., 6047.

91. No territory annexed to a municipality is liable for the payment of debts and obligations contracted by the corporation of such municipality before the annexation.

92. The council of every newly organized municipality, and of every municipality which comprises or governs a territory detached or separated from another municipality, is entitled to obtain certified copies of all by-laws, resolutions, orders, *procès-verbaux*, rolls, papers, books, plans or documents which have reference to such new municipality or to such territory, from the council in whose possession they are, on payment of ten cents for each hundred words.

The council requiring such copies may have them made by one of its officers, on payment of fifty cents for each certificate made or thereunto affixed by the secretary-treasurer or other officer in charge of such documents.

92*a*. The council of a county may, upon petition of a local council, pass, after notice, a by-law for the purpose of changing the name of a local municipality, for reasons that may be deemed advantageous; but such by-law shall not come into force until it has been submitted to the lieutenant-governor, and notice has been published as required by article 41.—2 Edw. VII, ch. 44.

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TITLE SECOND

PROVISIONS COMMON TO ALL MUNICIPAL CORPORATIONS

CHAPTER FIRST

OF THE MUNICIPAL COUNCIL

SECTION I. — GENERAL PROVISIONS

93. Every municipal corporation is represented by its council; its powers are exercised and its duties discharged by such council and its officers.

94. Such council is recognized and styled by the name of "The municipal council of *or* of the *(insert the name of the municipality without the words* municipality of *or* of the).

95. The council has jurisdiction throughout the entire extent of the municipality, the corporation of which it represents, and beyond the limits of the municipality in special cases where more ample authority is conferred upon it.

Its orders, within the scope of its powers, are obligatory upon all persons subject to its jurisdiction.

96. The municipal council may appoint committees, composed of as many of its members as it judges convenient, and may delegate to them its powers respecting the examination of any question, the management of any business or particular kind of business, or for the execution of certain duties.

The committees must render account of their labors and their decisions by reports signed by their chairman or by a majority of the members who compose them; and no report or order whatever of a committee has any effect until it has been adopted by the council at a regular session, save in the case of article 98.

Decision. — Councils must exercise directly the powers confided to them by law. Such powers cannot be delegated. *St. André Avellin* vs *Township of Ripon*, 4 Q. O. R., app. 167.

97. Every one who is entitled to be heard before the council or its committees, may be so heard in person or by any other person acting on his behalf, whether authorized by power of attorney or not. He may also produce and examine witnesses.

98. The council or committees, on every question or matter pending before them, may :

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1. Take communication of all documents and writings produced in evidence ;

2. Summon any person residing in the municipality ;

3. Examine under oath the parties and the witnesses produced by the parties, and administer or cause to be administered to them an oath or affirmation by one of their members or by the secretary-treasurer.

The council may declare who shall bear and pay the costs incurred for the production of the witnesses heard, or for the summoning of witnesses who have made default, and tax such costs, including the reasonable travelling expenses and fifty cents a day for the time of the witnesses. The amount thus taxed may be recovered, either by the corporation or by the person who has advanced and paid the same, as the case may be, in the manner prescribed for the recovery of penalties imposed by this code. — R. S. Q., 6048.

99. If any one so summoned before the council or the committees fails, without just cause, to appear at the time and place mentioned in the summons, when compensation has been paid or offered to him for his reasonable travelling expenses for going and returning, and fifty cents a day for his time, he incurs a penalty of not less than four, or more than ten dollars, or imprisonment not to exceed fifteen days.

100. Any *procès-verbal*, roll, resolution or other order of a municipal council, may be set aside by the Magistrate's Court or by the Circuit Court of the county or district, by reasons of its illegality, in the same manner, within the same delay, and with the same effect as a municipal by-law, and is subject to the provisions of articles 461 and 705.

This article does not exclude the right of causing a resolution or *procès-verbal* of a municipal council to be set aside by the Superior Court; provided that the costs incurred in the suit shall not exceed the costs and disbursements which would have been payable if the suit had originated in the Circuit Court. — 56 Vic., ch. 43, s. 1.

Decisions. — 1. The contestation of a resolution of a municipal council is not, when the object of such a resolution is the nomination of councillors by the council, exclusive of the contestation sanctioned by arts. 1016 et seq., of the Code of Procedure. *Paris* vs *Couture*, 10 Q. L. R., 1.

2. The Circuit Court may annul a decision of a county council sitting in appeal upon a by-law passed by a local council, if the county council commits an illegality. Arts. 100 and 698 apply to all municipal councils. *Corporation of St. Maurice* vs *Dufresne*, 10 Q. L. R., 227.

3. The jurisdiction of the Superior Court is not removed by Art. 100. *County of Arthabaska* vs *Patoine*, 9 L. N., 82; *Grenier* vs *Lacourse*, 2 Q. O. R., app. 445.

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4. The opening of a road, and the imposition of a direct tax upon those persons for whom it is opened constitute a legislative act, and is executory, until annulled, in virtue of arts. 100, 461 and 705 of the Municipal Code. The legality of such proceeding cannot be incidentally decided on a writ of prohibition, but only according to the procedure required by the code. *Simard* vs *County of Montmorency*, 4 Q. L. R., 20. *Parish of St. William* vs *the County of Drummond*, 7 R. L., 721. *Corporation of Freligsburgh* vs *Davidson*, 2 Q. O. R., sec. 371.

5. Where a person takes an action to annul tax and assessment roll, and thereafter consents to pay the tax claimed, another tax-payer may intervene, such a contestation being in the nature of a public action. *Molson's Bank* vs *City of Montreal* and *Hubert*, 11 R. L., 542.

6. A judgment of the Circuit Court annulling an assessment roll, is subject to appeal and to revision. *McLaren* vs *County of Buckingham*, 17 L. C. J., 53.

7. A judgment of the Circuit Court dismissing a petition presented in virtue of article 100, to annul a valuation roll, is subject to appeal the matter involving more than $100.00, and affecting future rights. *Rolph* vs *Corporation of the Township of Stoke*, 24 L. C. J., 213 app. 3 L. N., 69.

8. A judgment of the Superior Court rendered upon a petition presented in virtue of the general act concerning the corporations of cities, and demanding the annulment of a tax roll imposing a tax, is subject to revision, and to appeal. *McConnell* vs *County of Argenteuil*, 21 R. L., 12 app.

9. A judgment of the Circuit Court relating to a municipal liability is not subject to revision. *Terroux* vs *the Corporation of Arthabaskaville*, 9 Q. L. R., 62 app. *Fiset* vs *Fournier*, 3 Q. L. R., 334 app.

10. A judgment of the Circuit Court upon a contestation of the election of municipal councillors is not subject to revision. *Lacerte* vs *Dufresne*, 9 Q. L. R., 190.

11. There can be no review of a judgment of the Superior Court relating to a municipal office. *Fiset* vs *Fournier*, 3 Q. L. R., 334 app. *Beauchemin* vs *Hus*, 1 M. L. R., sec. 413.

12. No appeal lies from a judgment of the Superior Court, on proceedings concerning municipal matters, which fall under the provisions of chap. 10 of the Code of Procedure, such as a mandamus to compel a mayor to sign the proceedings of council. *Danjou* vs *Marquis*, 3 Q. L. R., 335.

13. There is no appeal from a judgment of the Superior Court, quashing a municipal by-law. *Parish of St. George de Henriville* vs *Lafond*, 2 Q. O. R., app. 126. But see *Guillaume alias Gagnon* vs *Corporation of St. Luce*, 19 R. L., 574.

14. There is no appeal from a judgment of the Circuit Court, quashing a resolution of council for the nomination of a councillor. *Corporation of St. Mathias* vs *Lussier*, 2 Q. O. R., app. 230.

15. The omission to publish a by-law, after its approval by the lieutenant-governor, is not a radical cause of nullity, to be incidentally invoked. The declaration in the by-law that its object is to raise money for general purposes is sufficient. *Corporation of Freligsburgh* vs *Davidson*, 2 Q. O. R., 271.

16. The increase of a valuation made, because the agent of the proprietor exacted with rigor the imposition of seigneurial rents, constitutes

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an illegality sufficient to justify the Superior Court upon direct action to quash such a valuation and to establish the old one, upon proof that the properties had not altered in value. *Ross* vs *Parish of St. Gilles*, S.C. Quebec, 20 April 1894.

17. The Superior Court is not authorized to decide the validity of a valuation roll, art. 100, relating only to acts done by the council, and the valuation roll being made by municipal officers. *Larand* vs *Village of St. Jean-Baptiste*, 17 L. C. J., 192, 4 R. L., 684. But see 6 supra. *McLaren* vs *Corporation of Buckingham*.

18. A by-law passed by a local council, granting a bonus to a railway, in which the date of the execution of the obligation imposed upon a company has been changed by a resolution adopted at a special meeting will not be annulled unless substantial justice results. *Simpson* vs *Parish of St. Malachi d'Ormstown*, 14 R. L., 485.

19. Where the provisions of the law are substantially followed, and no real injustice results, the Courts will not take account of simple irregularities. *Girard* vs *County of Arthabaska*, 32 L. C. J., 32.

20. Seven petitioners may unite in a single action, asking by injunction the quashing of a *procès-verbal*, changing the direction of a road, and that the corporation be ordered not to open the road on the respective properties of the petitioners. *Laferte* vs *Parish of St. Aimé* and *Robidoux*, 14 R. L., 476.

21. A judgment of the Superior Court for municipal taxes exceeding $100.00, is subject to review. *Corporation of Grantham* vs *Ward*, 11 Q. L. R., 222.

22. There is no appeal to the Supreme Court from a judgment rendered upon an action to annul a *procès-verbal*. *Corporation of the County of Verchères* vs *Village of Varennes*, 15 L. N., 5.

23. An appeal lies from the decision of a Judge in Chambers refusing a writ of injunction, to annul a municipal by-law. Quebec. — *Therrien* and *the Corporation of Limoilou*. C. P. C., 1033 and 1033 j.

24. There is no appeal, in municipal matters, from the judgment of the Circuit Court, unless the judgment is for $100.00 or more. *Rioux* vs *the Corporation of Rimouski*, 11 Q. L. R., 231.

25. An action to annul a *procès-verbal* and a valuation roll cannot be directed against a corporation whose council has homologated this *procès-verbal*, because in so doing, the council has exercised its judicial functions, and a corporation cannot be attacked therefor. *Barbeau* vs *the Corporation and the County of Laprairie*, 5 M. L. R., S. C. 84.

26. A resolution, ordering the making of an assessment roll, may be attacked by action before the Superior Court, before the notices which put the assessment roll in force. The jurisdiction created by art. 348 of the Municipal Code is exclusive, while that created by arts. 100, 401 and 690 merely add to the other means provided by law for the quashing of by-laws, etc. Recourse by action, and by petition in virtue of arts. 100, 401 and 699 are for the quashing of the proceedings of municipal councils. *Procès-verbal*, cannot be attacked before its homologation. *Lacoursière* vs *the County of Maskinongé* and *Grenier*, 1 Q. O. R., S. C. 558.

27. The quashing of a resolution may be demanded before it has been published, and the corporation of the county may be condemned to nominal damages, for having passed such a resolution. *County of Arthabaska* vs *Potvin*, 4 D. C. A., 364, 9 L. N., 82.

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28. A local corporation may, by action brought before the Superior Court, demand an annulment of a resolution of a county council sitting in appeal under art. 926, upon a decision of the council of such local corporation, rendered in virtue of art. 819. *The Corporation of the Island of Bizard* vs *Poudret*, S. C. Montreal, 30 June 1893, Davidson, J.

29. When a council illegally declares vacant a councillor's seat, such councillor has recourse, by mandamus, against the corporation. *Savaria* vs *the Parish of Varennes*, 3 M. L. R., S. C., 157. *Rouleau* and *the Corporation of St. Lambert*, 10 Q. O. R., S. C. 69.

30. In a case of incorrect valuations, the parties should proceed by appeal to the Circuit Court, under art. 1061 of the Municipal Code, and not by petition to annul. *The New Rockland Slate Co.* vs *the Corporation of Townships of Melbourne and Brompton Gore.* 12 L. N., 50.

31. In an action before the Circuit Court for taxes for less than $100 00, but in which the right to collect taxes is disputed, an appeal lies to the Court of Queen's Bench. *Corporation of Chambly* vs *Lamoureux*, 19 R. L., 312.

32. Interested parties have recourse by action brought before the Superior Court to reduce a valuation, when it is exaggerated, oppressive, and made in bad faith. Such an action is not subject to the delays and formalities prescribed by the Municipal Code, for the special recourse which it gives against municipal rolls and other acts of municipal authorities. *Ross* vs *the Corporation of St. Gilles*, S. C., 1894, 8 Q. O. R., 429.

33. A parish of a municipal council, in its corporate name, may institute a mandamus against the corporation of the county, to force the latter to acknowledge, as a member of the county council, the mayor regularly elected by the parish. *The Corporation of St. Barbe* vs *the Corporation of the County of Huntingdon*, 1 Rev. Jur., 1.

34. It is not necessary to indicate, in a *procès-verbal*, a water course, or the extent of each piece of land drained thereby; it is sufficient to indicate the lots that will contribute to the water course, according to the extent of the part drained. *Vincent* and *the Corporation of the County of Beauharnois*, 3 Rev. Jur., 1.

35. If a county council sitting in appeal upon a by-law passed by a local council, commits an illegality, recourse may be had to the Circuit Court. In such a case arts. 100 and 698 of the Municipal Code apply. *Corporation of St. Maurice* vs *Dufresne*, 10 Q. L. R., p. 227.

36. A resolution of council will not be annulled for such slight irregularities as the date of the certificate in an hotel license, or the quality of the person receiving the affidavit which accompanies it, as these do not operate prejudice. *Duhaine* vs *Corporation of the Parish of St. François du Lac*, 19 Q. O. R., 162, S. C.

37. A municipal council has not authority to permit a private person to construct a reservoir along the line of a ditch beside a public road, even if no public inconvenience is thereby caused. *Roy* vs *Corporation of St. Anselme*, 19 Q. O. R., 119. S. C.

38. The quashing of a valuation roll may be asked by petition under this article; but if the complaint only relates to the valuation of certain lands the proper course is to ask for a revision of the roll under art. 1061 of this code. *Senécal* vs *Corporation Parish l'Ile Bizard*, 17 Q. O. R., 267.

39. 1. A municipal council, in confirming a certificate for an hotel license under art. 18 of the Quebec License Law, does not represent the

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corporation of the municipality in which it sits, but constitutes a special authority created by the License Act.

2. The corporation cannot be sued for the act of the council in confirming a certificate.

3. The collector of Revenue is the sole judge of the legality of such a resolution of council. *Duhaine* vs *Corporation of Parish of St. François du Lac*, 19 Q. O. R., 162. S. C.

101. Any council which has neglected to appoint its head or its officers, or to fill any vacancy it was bound to fill, within the delays prescribed, may still make such appointment or fill such vacancy after such delay, unless the lieutenant-governor has already done so under the provision of this code.

102. Any document, order or proceeding of a municipal council, the publication of which is required by the provision of this code or by the council itself, must be published in the manner and at the places prescribed for public notices, except in cases otherwise provided for.

103. Any person, producing or lodging any document relating to municipal matters in the office of the council, or before the council in session, is entitled to a receipt or acknowledgment certifying the production or deposit of such document, from the secretary-treasurer, or in his absence, from the person presiding at the council, if the council is in session.

Any secretary-treasurer, or person presiding, who neglects or refuses to receive any such document, or to deposit the same in the archives of the council, or to give the required receipts, incurs a penalty of twenty dollars in each case, in addition to the damages caused by such refusal or neglect.

104. Documents produced as exhibits, and fyled in the office of the council or with its officers, must be returned on receipt to the persons who produced the same, whenever they require them.

105. The office of the council is that which is occupied by the secretary-treasurer in his official capacity, and must be held within the limits of the municipality, except in the case of the following article.

106. The office of the council of a rural municipality, or of its officers, and the place where it holds its sessions, may be established in the municipality of a village, of a town, or of a city, incorporated in virtue of this code or any other act, provided always that such municipality of a village, town or city, is contiguous thereto.

107. Every service, production or deposit, which should be made at the office of the council, may be made with equal validity to a reasonable person at the domicile of the secretary-treasurer, or to the secretary-treasurer personally.

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In such case, however, the receipt cannot be demanded unless the production or deposit has been made with the secretary-treasurer personally.

Section II. — Of the Members of the Council

108. Every member of the council, so soon as he is appointed, must make oath well and faithfully to discharge the duties of his office.

109. The oath which the head of the council shall have taken as councillor, does not exempt him from taking the oath of office as mayor or warden.

110. An entry of the taking of the oath of office by the councillors and the head of the council, before one of the officers mentioned in article 6, shall be made in the minute book of the council. — R. S. Q., 6049.

Decision. — The taking of the oath of office is essential, but the neglect to make entry thereof in the minutes of proceedings does not entail nullity. *Savaria* vs *Corporation of the Parish of Varennes*, 3 M. L. R., S. C. 157.

111. A member of the council does not enter upon the discharge of his duties, until he has taken the oath of office.

112. The omission during fifteen days on the part of any member of a council to take the oath required for the office to which he has been appointed, constitutes a refusal to accept such office, and renders him subject to the penalties prescribed in such case.

113. The councillors do not receive any salary, profit or indemnity, in any shape whatsoever, for their services.

Decision. — A by-law for the indemnification of a councillor for costs incurred by him in resisting an action by *Quo Warranto* to deprive him of his seat is null and *ultra vires*. *Thibaudeau* vs *The Corporation d'Aubert Gallion*. 4 Q. O. R., S. C. 485.

114. The members of the council are unable to hold any subordinate offices under any municipal council of which they are members, or under the county council, if they are members of one of the local councils of the county municipality.

115. No member of a council can be surety for the performance of the duties attached to an office under the council of which he forms part.

116. Every member of a council appointed in the place of another, whether it be as head of the council or as councillor, holds office for the remainder only of the period for which his predecessor has been appointed.

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117. Any person appointed a local or county councillor, who illegally refuses to accept such office or to continue to perform the duties thereof, incurs a penalty of twenty dollars.

118. A member of council is deemed to have refused to continue to perform the duties of his office when he, for two months, refuses or neglects without, in the opinion of the council, reasonable cause, to discharge the duties of such office.

119. Any member who refuses to accept the office or to continue to perform the duties of the office to which he has been appointed in the council, or who is unable to perform such duties for three consecutive months, through absence, illness, infirmity, or otherwise, may, at any time, until the vacancy caused by his refusal or incapacity to act be filled up, resume his duties and perform the same, if he is able to do so, without prejudice in any case to the costs of proceedings instituted against him, in the event of any such proceedings having been instituted.

120. No vote given by a person filling illegally the office of member of the council, and no act in which he participates in such quality, can be set aside solely by reason of the illegal exercise of such office.

Decisions. — 1. A by-law dividing a municipality into wards is carried by a vote of four against three. One of the majority had ceased to reside in the municipality and his seat in consequence became vacant. The by-law was annulled nothwithstanding art. 120. *Loiseau* vs *Lacaille*. Q. R. C., 236.

2. The council of the municipality by resolution accepted the pretended resignation of the plaintiff R. as councillor, and at a subsequent meeting, at which only three councillors were present, V. was elected to replace R. Thus constituted, the council passed resolutions removing and replacing other councillors and borrowed $200 to pay certain amounts claimed by themselves personally.

In reply to action taken to annul these resolutions and proceedings the corporation pleaded that they were rendered necessary by the persistent absence of certain councillors whose object was to prevent a quorum; that V's acts as a *de facto* councillor were valid and that paintiff's action should have been by *quo warranto*.

Held: (*a*) That although R. had declared his intention to resign he had not actually done so and could not be replaced by another; at all events, not unless by a quorum; that it is doubtful whether a resignation can be proved by parole testimony.

(*b*) *Mandamus* and *quo warranto* are not the only remedies open to a councillor illegally deprived of his seat.

(*c*) Before attacking resolutions of council, it is not necessary to proceed by improbation.

(*d*) The duty of the secretary-treasurer is to record the resolutions and acts of the council, and not the words or acts of councillors. These latter may, upon order of the council, be expunged.

(*e*) Any councillor having a direct pecuniary interest in a matter before the council cannot form part of the quorum.

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(*f*) A quorum cannot be completed by a councillor who holds his seat illegally, and such a one will not be deemed an officer *de facto* when the irregularity was known to the three other councillors of the majority.

(*g*) The plea that a councillor has the status of a *de facto* officer can, as a rule, be admitted only when the interest of innocent third parties are involved. *Rouleau* vs *The Corporation of St. Lambert*, 10 Q. O. R., S. C. 69.

Confirmed in Review, *id.*, page 85.

3. In a petition for a writ *quo warranto*, error as to date of nomination is not cause for nullity and may be amended. The allegation that the defendant holds his office illegally and without right is sufficient.

To constitute an official *de facto*, there must exist the general reputation of being the official which one assumes to be, although not in reality legally appointed.

The meaning of art. 120 is that if a corporation permits an individual to act as a councillor, it is bound by his acts even though they affect the rights of third parties in good faith; but this article does not intend that the acts of a councillor whose nomination is notoriously illegal, shall be held as valid. *Lacasse* vs *Labonté*, 10 Q. O. R., S. C. 98.

4. A municipal councillor is entitled to make known to council every fact which might furnish reasons for not granting a contract to a party seeking it. It is even his duty so to do, but if his statements are false he is subject to damages. *Campeau* vs *Monette*, 19 Q. O. R., 429. S. C.

5. No appeal lies to the Court of King's Bench from a judgment of the Superior Court in an action of *mandamus* under the provisions of chapter 40 section 3, C. C. P., to compel a municipal corporation to recognize the plaintiff as a duly elected and qualified member of their municipal council and to reinstate him in that position from which they had removed him without lawful cause; and additional conclusions asking for a declaration by the court of the illegality of the resolution of the council professing to effect the removal, and that defendant abstain pending the suit from acting under the alleged illegal resolution, do not change the nature of the action or remove it from the conditions and restrictions of chapter 40, C. C. P. *Corporation Village of Delorimier* vs *Bédard*, 10 Q. O. R., 95, K. B.

Section III.—Provisions specially applicable to the head of the Council

121. The head of the council exercises the rights of superintendence over all the officers of the municipality, sees to the faithful and impartial execution of all municipal ordinances and by-laws, and communicates to the council any information or suggestion which he considers conducive to the interests of the municipality or its inhabitants.

122. He signs, seals and executes, in the name of the council, all debentures, contracts, agreements or deeds made and passed by the corporation, unless the council provide otherwise.

123. It is his duty to read to the council, in session, all circulars or communications addressed to himself or the council by the lieu-

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tenant-governor or by the provincial secretary, and, if it be required by the council, or by the lieutenant-governor, to make them public in the municipality, in the manner required for public notices.

124. He is also bound to furnish to the lieutenant-governor, on demand, all information concerning the execution of the municipal law, and all other information which it may be in his power to give with the concurrence of the council.

125. The head of every council is *ex-officio*, without other qualification and without being obliged to take the oaths prescribed for such office, a justice of the peace within the limits of the municipality wherein he exercises his office, so long as he continues in office.

He is incompetent to hear and decide all cases in which the corporation or its officers are interested parties.

SECTION IV. — OF THE SESSIONS OF THE COUNCIL

126. Special sessions of any municipal council may be convened at any time by the head or by the secretary-treasurer or by two members of such council, by giving special notice of such sessions to all the members of the council, other than those summoning the same.

Decisions. — 1. The presence of a councillor at a session covers the failure to give notice. *Loiseau* vs *Lacaille*, 2 R. C., 236 ; *Paris* vs *Couture*, 10 Q. L. R. 1.

2. Notice may be given verbally. *Pichette* vs *Legris*, 20 R. L. 79.

127. At a special session the subjects or matters mentioned in the notice calling the council together can alone be taken into consideration.

The council, before proceeding to business at such session, must set forth and declare in the minutes of the sitting contained in the book of its deliberations, that the notice of meeting has been issued in conformity with the requirement of this code to all the members of the council who are not present at the opening of the sitting.

If it appears that the notice of meeting has not been served on all the absent members, the session must be immediately closed, under penalty of all its proceedings being null.

Decisions. — 1. When all the councillors are present at a special session, the council may, by unanimous consent, proceed to deal with any business whatsoever within the score of its powers. *Paris* vs *Couture*, 10 Q. L. R. 1.

2. At a special session convened to nominate the mayor, at which all the members of council are present, the council cannot pass a resolution declaring vacant the seat of a councillor whose disqualification is well-known. *Pattison* vs *Corporation of Bryson*, 9 L. N. 169.

3. The notice of meeting should not be in general terms, but ought to specify the business to be considered. *Bourbonnais* vs *Filiatrault*, 4 Q. O. R., S. C. 13.

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4. A by-law may be validly passed at a special session, if all the councillors are present and none object to proceeding to such business on that day. The nullity mentioned in art. 127 only applies when some councillors are absent or notice has not been given them. 11 Q. O. R., S. C., 348.

5. A special session was held and closed. One hour later some of the councillors assembled and adopted certain resolutions differing from those passed at such special session. These latter resolutions were held to be of no effect and irregular. *Schambier* vs *The Corporation of the Township of South Halifax*, 12 Q. O. R., S. C. 197.

128. Every session commences at the hour of ten in the forenoon, unless otherwise determined by the notice of the meeting, by an adjournment, or a by-law or resolution of the council.

129. If the day fixed for an ordinary session by the provisions of this code or by municipal by-laws, falls upon a holiday, such session is held on the next following judicial day.

130. The sessions are held with open doors. Until otherwise ordained, in virtue of article 467, each session consists of one sitting, unless adjourned.

131. The sessions of the council are presided over by its head, or in the event of there being no head, or in his default to act, or in his absence, by one of its members, chosen from the councillors present. In the case of an equal division of votes in the choice of a presiding officer, the member present chosen by lot presides at the council board.

132. The presiding officer of the council maintains order and decorum and decides questions of order, saving appeal to the council.

He has and may exercise, subject to an appeal to the council, all powers conferred by article 301 on the presiding officer at an election.—R. S. Q. 6050.

133. Every disputed question is decided by a majority of the votes of the members present, excepting in case where in conformity with the provisions of this code, the votes of two thirds of the members of the council or of the members present, are required.

134. The chief of the council and the presiding officer, if also members of the council, vote each time a question is put to the vote; and in case of an equal division of votes, they have in addition the casting vote.

If the presiding officer be not also a councillor, he can only vote in the case of an equal division of votes.

In case of an equal division of votes, the presiding officer is always bound to give the casting vote.—R. S. Q. 6051.

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Decision. — The mayor can only vote when there is an equality of votes. *Lemieux* vs *Cantin*, 7 Q. L. R. 16; 4 L. N. 158. (This decision being directly contradicted by art. 134 cannot be considered authoritative.)

135. No member of a council can take part in the discussion of any question in which he has a personal interest. The council, in case of dispute, decides whether the member has or has not a personal interest in the question; and such member has no right to vote on the question of his interest.

This article does not apply to the appointment of the head of the council nor to the naming of committees.

Note as to corrupt practices in municipal affairs. — "Every one is guilty on an indictable offence and liable to a fine not exceeding one thousand dollars and not less than one hundred dollars, and to imprisonment for a term not exceeding two years and not less than one month, and in default of payment of such fine to imprisonment for a further term not exceeding six months, who directly or indirectly.

"(*a*) makes any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any member of a municipal council, whether the same is to inure to his own advantage or to the advantage of any other person, for the purpose of inducing such member either to vote or to abstain from voting at any meeting of the council of which he is a member or at any meeting of a committee of such council in favour, of or against any measure, motion, resolution or question submitted to such council or committee; or

"(*b*) makes any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any member or to any officer of a municipal council for the purpose of inducing him to aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or

"(*c*) makes any offer, proposal, gift, loan, promise or agreement to pay or give any money or other material compensation or consideration to any officer of a municipal council for the purpose of inducing him to perform or abstain from performing, or to aid in procuring or preventing the performance of, any official act; or

"(*d*) being a member or officer of a municipal council, accepts or consents to accept any such offer, proposal, gift, loan, promise, agreement, compensation or consideration as is in this section before mentioned; or in consideration thereof, votes or abstains from voting in favour of or against any measure, motion, resolution or question, or performs or abstains from performing any official act; or

"(*e*) attempts by any threat, deceit, suppression of the truth or other unlawful means to influence any member of a municipal council in giving or with holding his vote in favour of or against any measure, motion, resolution or question, or in not attending any meeting of the municipal council of which he is a member, or of any committee thereof; or

"(*f*) attempts by any such means as in the next preceding paragraph mentioned to influence any member or any officer of a municipal council to aid in procuring or preventing the passing of any vote or the

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granting of any contract or advantage in favour of any person, or to perform or abstain from performing, or to aid in procuring or preventing the performance of any official act."—(*Criminal Code*, art. 136).

"Every person who, directly or indirectly, shall promise, offer, give, or furnish, or cause or abet in causing to be promised, offered, to be given or furnished, in whole or in part, to any member of the municipal council of the municipality of any city or town or to any officer of such municipality, before or after he shall have been qualified and have taken his seat, or entered upon his duty, any moneys, goods, right of action, or other thing, or anything of value, or any pecuniary advantage, present or prospective, or a share in any contract or undertaking, with intent to influence his vote, opinion, judgment or action, on any question, matter, cause, or proceeding, which may then be pending, or may by law be at any time brought before him in his official capacity, shall be liable to a fine of not less than five hundred dollars, if the sum of money or value of the goods, right of action or other thing promised, offered, given or furnished, do not exceed the said sum of five hundred dollars, and, if the sum or value is more than five hundred dollars, then every such person shall be liable to a fine equal to such sum or value, but not to exceed five thousand dollars, and, in default of payment to imprisonment in the common gaol until such fine be paid.

"1o. Every such person who shall accept any gift, promise, or undertaking, under any understanding that his vote, opinion, judgment or action shall be influenced thereby in any question, matter, cause or proceeding then pending or which may by law be brought before him in his official capacity, shall be liable to a fine of not less than five hundred dollars, if the gift, promise, or undertaking accepted, does not exceed in value the sum of five hundred dollars, and, if the value exceeds the latter sum, every such person shall be liable to a fine equal to such value but not to exceed five thousand dollars, and, in default of payment to imprisonment in the common gaol until such fine be paid."—R. S. Q., 4645.

"In municipalities other than those mentioned in the preceding article, the penalty shall be double the amount so offered or accepted, provided it be not less than twenty or more than one hundred dollars." Art. 4646 R. S. Q.

"Upon judgment finally rendered against him, the person convicted of the offence shall forfeit his office and shall further be disqualified from holding any public office in the Province." Art. 4647 R. S. Q.

"1o. Any member of a municipal council, who knowingly during the existence of his mandate has or had, directly or indirectly by himself or his partner, any share or interest in any contract or employment, with, by or on behalf of the council, or who knowingly during the existence of his mandate, has or had, through himself, or his partner or partners, any commission or interest, directly or indirectly, or who derives any interest, in or from any contract with the corporation or council of which he is a member, shall, upon a judgment obtained against him under the provisions of this act, be declared disqualified from holding any public office in the said council or under the control thereof during the space of five years.

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"2o. Any member of a municipal council, who knowingly during the existence of his mandate has or had directly or indirectly, through a partner or partners, or through the agency of any other person, any interest, commission or percentage, with the municipal council of which he is a member, or knowingly during the existence of his mandate has or had derived any pecuniary remuneration from any contract for work performed or to be performed shall, upon a judgment obtained against him under this act, be declared disqualified from holding any public office in the said council or under the control thereof for the space of five years.

"3o. The preceding clauses shall not apply to the shareholders in a *bona fide* incorporated company.

"4o. No alderman or councillor shall hold any office or place of profit in the pay of corporation or municipality which he represents.

"No alderman or councillor shall be appointed to any office in the gift of corporation or municipality while he holds office as such alderman or councillor; and no nomination of such alderman or councillor for such office shall be valid, until he shall have resigned the office of alderman or councillor and such resignation has been accepted.

"5o. The council of any city or municipality, by resolution thereof, or fifty electors of any city or municipality, may, by petition to a judge of the Superior Court, in the district in which such city or municipality is situated, in term or in vacation, require such judge to investigate any matter to be mentioned in the resolution or petition, and relating to a supposed malfeasance, breach of trust or other misconduct on the part of one or more members of the council or officers of the municipality, or of any person or persons having a contract or contracts therewith, or, in case the council of any city or municipality sees fit to cause inquiry to be made into or concerning any matter connected with the good government of the city or municipality, or the conduct of any part of the public business thereof, and if the council or the electors at any time petition the said judge to make the inquiry, the judge shall, after having given, to the parties incriminated, notice of the accusation and of the date at which he shall proceed with the inquiry, inquire into the same, and shall, for that purpose, have all the powers which are conferred by this act or under any law respecting inquires concerning public matters.

"The judge shall continue such inquiry from day to day, with all convenient despatch, and report to the council the result of the inquiry and the evidence taken thereon.

"The judge, in making his report, shall also report as to the costs.

"6o. In the case of such petition being presented by the electors, they shall accompany the same by an affidavit of a credible rate-payer, whose name appears upon the valuation roll as proprietor of immoveable property of at least $5,000 in value over all hypothecs in cities, and of at least $500 in other municipalities, declaring that he has reason to believe that the allegations of the petition are true, and they shall deposit, with their petition, the sum of five hundred dollars, as security for costs.

"7o. The judge may, of his own accord, or at the request of any elector, deliver to any party, interrogatories in writing upon any matter as to which discovery may be sought, and require such party, or, in the case of a body corporate, any of the officers of such body corporate, within three days, to answer the questions in writing, by affidavit to be sworn and filled in the ordinary way. ,

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"8o. The judge may enquire into subsequent transactions of the parties, if necessary, to ascertain if any remuneration was paid to any such alderman, councillor or public official, subsequent to the service rendered.

"The judge may, at his own discretion or at the request of other parties, examine any person or corporation accused of having bribed any of the functionaries herein mentioned, and may compel such parties to disclose what consideration was paid, or promised to be paid, whether it consisted of stock or shares at a rate lower than the market price, with promise of redemption at a higher price, or of a commission on the amount of contract obtained, or of a percentage on the amount of work done and materials furnished, or of a specific sum of money, or any other consideration whatever.

The judge may generally, ascertain how any such reward or remuneration was or is to be paid, examine any party to a transfer of stock or securities of any kind, who is mentioned as the holder in trust of the proceeds of any bribery transaction, and compel such persons or corporations to disclose what they know about the transaction, and to produce any books supposed to contain a record of the transaction in question.

"9o. No alderman, councillor or employee of any corporation shall be exempted from testifying on the ground that he is no longer an alderman, councillor or employee.

"He may also be compelled to disclose any remuneration or reward whatsoever received or which he hopes to receive on account of services by him rendered in his official character, before or since the transaction in question was accomplished.

"10o. Any municipal elector may obtain a copy of such report and of the evidence and documents connected therewith.

"11o. Every person who has paid any money, commission, fee or reward, to any member of a municipal council for services performed or to be performed by such member of the municipal council, in his official capacity, whether it be service rendered by himself, directly or indirectly, or through a third party, and for the prosecution of any business before the council or before any committee thereof, may recover the same, at any time, by suit at law, in any court of competent jurisdiction.

"12o. Every person, called as a witness under this act, shall be admitted and compellable to give evidence; notwithstanding that such person may have an interest in the matter in question.

"13o. Any person omitting or refusing, without just cause, sufficiently to answer all questions as to which a discovery may be sought, within the above time or such extended time as the judge may allow, or to render any testimony in virtue of this act, shall be deemed to be in contempt, and punished accordingly; but no answer given by any person so heard as a witness can be alleged against him in any prosecution under this act or any other act of the Legislature of Quebec, if the judge has given him a certificate establishing that he has claimed the right to be excused from answering, for the reason above given, and has given full and truthful answers, to the satisfaction of the judge.

"14o. Any person accused before a judge, under the provisions of this act, shall be heard personally, or by attorney, and may make his defence and produce his witnesses.

"15o. Every suit, under the provisions of this act, shall be instituted by a *qui tam* action, under the provisions of articles 887 and following of the Code of Civil Procedure.

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"16o. The term "member of a municipal council" shall include municipal councillors, aldermen, and delegates to the county council.

"17. The provisions of this act shall not affect any recourse which may exist under any other act or under the common law."—58 Vict., ch. 42.

"Whereas there are among the statutes of this Province two distinct and different laws concerning municipal and civic corruption, one of which is to be found in articles 4645 and following of the Revised Statutes and the other in the act 58 Vic., cha. 42;

"Whereas the simultaneous existence of these two different laws may create confusion, and injustice may arise therefrom;

"Therefore Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

"1o. Article 4647 of the Revised Statutes is repealed and any condemnation that may have been had in the past or may hereafter be had against any person in virtue of articles 4645 and 4646 of the said Revised Statutes, is declared to have involved, and *ipso facto* shall involve, as the only additional consequence, the forfeiture provided by sections 1 and 2 of the act 58 Vic., ch. 42.

"In the case in which, however, the defendant has satisfied or shall satisfy the condemnation provided by the said articles 4645 and 4646, the time of the forfeiture provided for by sections 1 and 2 of the said act 58 Victoria, chapter 42, is declared to be reduced, as well for the past as for the future, from five years to eighteen months, to be reckoned from the date of the judgment rendered in the first instance."—60 Vic., ch. 42.

Decisions. — 1. The interest referred to in art. 135 must be personal and direct as distinguished from the general interest of tax-payers. *Desrochers* vs *The Corporation of St. Basil*, 17 R. L., 266.

2. The influence which one may exert upon another without threatening or intimidation does not contravene art. 135. *Belair* vs *The Royal Electric Co.*, 4 Q. O. R., Q. B. 548.

3. The council of Lachine voted by single resolution to confirm nine certificates for the sale of intoxicating liquors. Three councillors who voted were interested. Without these there would not have been a quorum. Held by the Court of Appeals that the resolution was illegal. *Ouellet* vs *The Corporation of Lachine*, 2 Q. O. R., 100.

4. The members of a council affected by the operation of a by-law dealing with work upon a highway have a special interest apart from that which is common to the other tax-payers of the municipality and cannot take part in the discussions upon such by-law. Nor can they vote upon the question as to whether they are interested. *Thibaudeau* vs *The Corporation of St. Thecle*, 1 Rev. de Jur., S. C. 65.

5. The resolution declaring that a councillor is not personally interested is final and decisive on the question. *Provost* vs *The Corporation of the Parish of Ste. Anne of Varennes*, 6 M. L. R., S. C. 489.

6. Relationship of a councillor to a candidate whose election is proposed at a meeting of council is not sufficient interest to deprive such councillor of the right of voting. *Gauthier* vs *Chevalier*, 7 Q. O. R., S. C. 178.

7. The interest of a rate-payer merely does not constitute a personal interest of such a nature as to forbid a mayor taking part in the deliberations of council upon a *procès-verbal* relating to a public road.

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A resolution of a county council forbidding the mayor to deliberate under these circumstances will be annulled and the parties ordered to proceed *de novo*. *Manseau* vs *Pepin* and *Corporation of L'Assomption*, 7 Rev. de Jur. 212.

136. If the majority of the members of a local council have a personal interest in any question submitted to their decision, such question must be referred to the county council, which in respect of the consideration and decision of such question, possesses all the rights, privileges and obligations of the local council.—R. S. Q.

137. Members of the council are not permitted to vote by ballot; the votes are recorded in the minutes of the proceedings of the council, when required.

138. Any ordinary or special session can be adjourned by the council to any other hour of the same day or to a subsequent day, without it being necessary to give notice of such adjournment to the members who were not present, excepting in the case of the following article.

Decision. — An adjourned meeting may be legally held without the notice required for the first meeting as the two sessions constitute but one meeting. *Provost* vs *Corporation of Ste. Anne de Varennes*, 6 M. L. R., S. C. 489; 13 L. N. 414.

139. Two members of the council, when there is not a quorum present, may adjourn the session at the expiration of one hour from the time it was established that there was no quorum. The hour of the adjournment and the names of the members of the council present must be inscribed in the minutes of the sitting in the book of the proceedings of the council.

In this case a special notice of the adjournment is given by the secretary-treasurer to the members of the council who were not present at the time of adjournment. The service of this notice must be established at the resumption of the adjourned session, in the same manner as that of the notice convening a special session, and the absence of service of such notice renders every proceeding adopted at such part of the adjourned session, void.

140. No council is dissolved by the fact of any session thereof not having taken place.

141. The place where the sittings of the council are held, must be as much as possible in the most public place of the municipality.

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CHAPTER SECOND

OF THE OFFICERS OF THE MUNICIPAL COUNCIL

SECTION I. — OF THE SECRETARY-TREASURER

142. Every municipal council must have an officer entrusted with the care of the office and the archives of the council, and designated by the name of " secretary-treasurer ".

In every newly formed municipality, the secretary-treasurer must be appointed by the council within thirty days after the entry into office of the majority of the new councillors.

Decision. — A priest cannot hold a municipal office. The office of secretary-treasurer is a public office in the sense of art. 1016 of the Code of Civil Procedure. ***Vanier*** **vs** ***Meunier.*** **— 12 L. N. 370 ; 15 Q. L. R. 210.**

143. The secretary-treasurer remains in office during the pleasure of the council.

144. Every secretary-treasurer, before acting as such, must make oath to discharge well and faithfully the duties of his office, and must within thirty days next following give security in the manner prescribed by this code.

Nevertheless the want of security shall in no wise prevent the secretary-treasurer from performing the duties of his office ; but those members of the council under whom he acts, who have not exacted or demanded such security, shall be jointly and severally responsible in the same manner as are the sureties in virtue of article 147. — R. S. Q., 6052.

145. The secretary-treasurer may, from time to time, appoint under his hand, an " assistant-secretary-treasurer ", who may perform all the duties of the office of secretary-treasurer, with the same rights, powers and privileges and under the same obligations and penalties as the secretary-treasurer himself, except as regards giving security.

In the cases of a vacancy in the office of secretary-treasurer, the assistant-secretary-treasurer must continue to perform the duties of the office until the vacancy is filled.

The assistant-secretary-treasurer enters into office after making oath to discharge well and faithfully the duties of such office ; he may be removed or superseded at will by the secretary-treasurer.

In the performance of his functions, he acts under the responsibility of the secretary-treasurer who appointed him, and of the sureties of such secretary-treasurer.

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§ I.—*Of the Security furnished by the Secretary-Treasurer.*

146. The secretary-treasurer furnishes either one or two sureties, whose names are first approved by resolution of the council.

147. The sureties bind themselves jointly and severally with the secretary-treasurer, towards the corporation, for the due performance of the duties of his office and for the payment of all moneys, for which the latter in the exercise of his office may be accountable, whether principal, interests, costs, penalties or damages.

148. One of the obligees must hypothecate, in and by the security-bond, property belonging to him personally for the payment of a sum determined by resolution of the council, and exigible under the provisions of the preceding article.

This hypothec may be given in the same instrument by more than one of the obligees, or upon more than one property.

The properties offered must be previously accepted by resolution of the council; nor can they be accepted until it is proved to the satisfaction of the council that they are worth, at least, beyond all charges and hypothecs upon them, twice the amount of the hypothec required.

149. The security-bond must be accepted by the head of the council in the name of the corporation, and be executed before a notary, or in duplicate, *sous seing privé*, before two witnesses who sign the same.

Such security-bond, any law to the contrary notwithstanding, constitutes a hypothec on the immoveables therein described, so soon as it shall have been registered in the office of the registration division in which such immoveables are situated.

It is the duty of the secretary-treasurer, without delay, to register his security-bond, and after he has registered the same, to transmit a copy thereof or a duplicate thereof to the head of the council, together with a certificate of its enregistration.

150. The sureties of the secretary-treasurer may, at any time, by giving notice in writing of their intention to the secretary-treasurer himself and to the head of the council, free themselves from future liability under their bond, at the expiration of thirty days after the service of such notice.

This notice is given and served by a notary, or by the surety himself in a writing delivered in presence of one witness who signs the same.

151. The secretary-treasurer must, within thirty days after the service of such notice, furnish other sureties in lieu of those who

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have withdrawn; in default of his so doing, he cannot discharge any of the functions of his office, under a penalty of twenty dollars for each infraction of the provision.

152. Whenever one of his sureties dies, becomes insolvent, or removes his domicile outside the limits of the district, the secretary-treasurer must, so soon as he becomes aware of such fact, inform the head of the council in writing thereof, under a penalty of one hundred dollars; and he must supply the place of such surety within the thirty days next following. In default of his so doing he cannot perform any of the duties of his office, under the penalties prescribed by the preceding article.

153. The sureties of the secretary-treasurer, after they are freed from future liability under their bond, or after the secretary-treasurer has ceased to discharge the duties of such office, may exact from the head of the council a certificate of discharge for the future, which certificate, after registration thereof, discharges thenceforth the immoveables hypothecated by such security-bond.

154. The head of the council is authorized to give and sign a consent to the discharge of the hypothec given by the sureties of the secretary-treasurer, in cases where such consent may be asked and granted.

155. No person, who has been surety for any secretary-treasurer, can be a member of the council whereof such secretary-treasurer was the officer, until he is discharged from all obligations towards the corporation arising out of his security-bond.

Decision. — The election of a councillor was contested on the ground that he was surety for the secretary-treasurer. The plea was that on taking the oath of office he was no longer such surety and that at its first meeting the council had discharged him as such surety and had accepted another. Held that the election was invalid. *Faucher* vs *Dumoulin*, 17 R. L. 426.

155*a*. The secretary-treasurer may, with the consent of the council, in lieu of hypothecary security, furnish security by means of a bond or policy of guarantee in favor of the corporation, in any Canadian Guarantee Assurance Company, approved of by the council. — R. S. Q., 6053.

§ II.—*General Duties of the Secretary-Treasurer.*

156. The secretary-treasurer is the keeper of all the books, registers, plans, maps, archives, and other documents and papers, which are either the property of the corporation, or are produced, filed and preserved in the office of the council. He cannot divest himself of

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the custody of these archives, except with the permission of the council, or under the authority of a competent court.

Decision. — The secretary-treasurer is not bound to dispossess himself of any document forming part of the archives of the council, even to fyle them in court. *Cramp* vs *The City of Montreal*, 21 L. C. J. 249; *Workman* vs *The City of Montreal*, 20 L. C. J. 217.

157. He attends at all sessions of the council, and draws up minutes of all the acts and proceedings thereof, in a register kept for the purpose, and called "The Register of proceedings".

All minutes of the sittings of the council must be approved by the council, signed by the person who presided over the council during such sitting, and countersigned by the secretary-treasurer.

Whenever a by-law or a resolution is amended or repealed, mention must be made thereof in the margin of the register of proceedings, and opposite such by-law or resolution, together with the date of its amendment or repeal.

Decisions. — 1. The secretary is not obliged to enter the resolutions of council during the sessions; it is sufficient to take notes on loose sheets for subsequent entry in his register. *Martin* vs *Corporation County of Argenteuil*, 7 L. N. 139.

2. Any rate-payer is entitled to compel the record of any resolution regularly passed by council, to be entered by the secretary of the council. *Massue* vs *Nadeau et al*; 3 M. L. R., S. C., 118.

3. Minutes unsigned by the secretary and the mayor are null. *Gifford* vs *Germain*, 1 Rev. Jur. 234.

158. Copies and extracts, certified by the secretary-treasurer, from all books, registers, archives, documents and papers preserved in the office of the council, are evidence of their contents.

159. The secretary-treasurer collects and has charge of all moneys due or payable to the corporation.

Decisions. — 1. Vide decisions under art. 120.

2. The secretary-treasurer can only make payments in the manner authorized by law. He cannot escape the responsibility of entrusting this duty to another person. *Corporation of Melbourne* and *Brompton Gore* vs *Main*.—11 L. N. 394.

3. The secretary-treasurer has no right to sign promissory notes or accept drafts for the corporation. *Martin* vs *Corporation of Hull*, 9 R. L. 512.

4. Nor to accept a promissory note for municipal taxes. *Dumaine* vs *Corporation of Montreal*, 1 R. C. 475.

160. He pays out of the funds of the corporation all sums of money due by it, whenever he is authorized to do so by the council. If the sum to be paid does not exceed ten dollars, the authorization of the head of the council is sufficient.

Even in the absence of authorization from the council or from the

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head of the council, it is his duty to pay, out of the funds of the corporation, any draft or order drawn upon him, or any sum demanded, by any one empowered so to do by the provisions of this code, or by the municipal by-laws.

No draft or order can, however, be legally paid, unless the same shows sufficiently the nature of the use to be made of the sum therein mentioned.

161. No secretary-treasurer can, under a penalty of twenty dollars for each infraction :

1. Grant discharges to rate-payers or other persons indebted to the corporation for municipal taxes or other debts, without having actually received in cash or in lawful value the amount mentioned in such discharges ;

2. Lend, directly or indirectly, by himself or by others, to rate-payers or other persons whatsoever, moneys received in payment of municipal taxes or belonging to the corporation.

162. The secretary-treasurer is bound to keep, in the form prescribed by the provincial secretary, books of account, in which he enters, according to date, each item of receipt and expenditure, mentioning therein the names of all persons who shall have paid money into his hands, or to whom he has made any payment.

He must preserve and file amongst the archives of the council all vouchers for his expenditure. — R. S. Q., 6054.

163. The secretary-treasurer is bound to keep a " repertory ", in which he mentions in a summary manner and in the order of their dates, all reports, *procès-verbaux*, acts of apportionment, valuation rolls, collection rolls, judgments, maps, plans, statements, notices, letters, papers and documents whatsoever, which are in his possession during the exercise of his office.

164. The secretary-treasurer's books of account and vouchers for his expenditure, together with all the registers or documents in his possession as archives of the council, are, on office days, between the hours of nine in the morning, and four in the afternoon, opened for inspection and examination, to members of the council, to municipal officers, to every interested party, and to all rate-payers of the municipality, or their attorneys.

Such persons, either themselves or by their attorneys, may take either with a pencil or with a pen, all notes, extracts or copies which they require. — R. S. Q., 6055.

165. The secretary-treasurer is bound to deliver, upon payment of his fees, to any person applying for the same, copies or extracts from

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any book, roll, register, document or other paper, which forms part of the archives.

It is also his duty to send without delay by mail to the principal place of business of any corporation, or iron or wooden railway company, which shall have filed in the office of the council a general application to that effect, and shall have made such principal place of business known, a certified copy of every public notice, by-law, resolution or *procès-verbal* filed for homologation or homologated, which affects such corporation or company, as well as a certified extract from the valuation roll, including the valuation of the taxable property of such corporation or company, together with a bill of his fees, which the company is bound to pay immediately on receipt of such document.

His fees, until established under art. 471, and unless otherwise fixed by the provisions of this code, are ten cents per hundred words, and fifty cents for the certificate.

The secretary-treasurer nevertheless is bound to furnish gratuitously any copy or extract required by the lieutenant-governor, or by the council or its officers.

166. The secretary-treasurer is bound to render, during the month of January in each year, a detailed account of his receipts and expenditure up to the thirty-first day of the month of December preceding, and he is also bound to render such account oftener if required by the council.

167. If he refuse or neglect to comply with the provisions of the preceding article, he may be sued by the corporation to render such account before any competent court, and may be in such action condemned to render account and to pay damages for such refusal or neglect.

He must be condemned to pay the sum which he has admitted to be due, or which he has been declared to owe, together with all such other sums as he ought to have debited himself with or which the court holds him accountable for, with interest in every case, at the rate of twelve per cent., by way of penalty, and the costs of suit.

Every such judgment carries with it coercive imprisonment, if the same has been demanded in such action of account.

168. The secretary-treasurer of every local municipal council is bound, between the first and twenty-first days of January in each year, to transmit to the provincial secretary, a return, showing :

1. The name of the corporation ;
2. The estimated value of the taxable real estate ;
3. The estimated value of the real estate not subject to taxation ;

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4. The estimated value of the property declared liable to taxation, by article 710 ;

5. The number of persons paying taxes ;

6. The number of arpents of valued land ;

7. The rate of assessment in the dollar imposed for all purposes whatsoever ;

8. The value of the property of the corporation ;

9. The debentures of the corporation ;

10. The amount of taxes collected within the year, including the amount for the county council ;

11. All other sums collected ;

12. The amount of arrears of taxes ;

13. The capital amount due to the municipal loan fund ;

14. The amount of interest due upon such loans ;

15. All other debts ;

16. The amount raised by loan within the year ;

17. The amount received from the government under the seigneurial act ;

18. The interest paid on debentures ;

19. The expenditure for salaries, and other expenditure for municipal government ;

20. All other expenditure ;

21. The number of persons resident in the municipality ;

22. Any other statement which the lieutenant-governor in council may require. — R. S. Q., 6057.

168*a*. The secretary-treasurer of every county council is bound, in the month of January in each year, to transmit to the provincial secretary a return showing :

1. The name of the corporation ;

2. The value of the property belonging to the corporation ;

3. The debentures of the corporation ;

4. The capital amount due to the municipal loan fund;

5. The amount of interest due on such loans;

6. All other debts ;

7. The amount received from the government under the seigneurial act ;

8. All other revenues ;

9. The interest paid on debentures ;

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10. The expenditure for salaries, and other expenditure for municipal government ;

11. All other expenditure; and

12. Any other statement which the lieutenant-governor in council may require. — R. S. Q., 6058.

168*b*. The provincial secretary is bound to make a compiled statement by counties of the reports made in virtue of the two preceding articles, with a summary of such reports by counties, and to submit the same to the legislature within the first fifteen days of the next session.

169. Every secretary-treasurer or clerk of a council of a local municipality or of a village, town or city council, who neglects or refuses to comply with the provisions of article 168, and furnish all the information set forth in the forms prescribed by the lieutenant-governor in council, or by the provincial secretary, if such forms have been addressed to him by the provincial secretary in the course of the month of December preceding, is liable to a fine of not less than fifty and not more than two hundred dollars, in addition to the costs. — R. S. Q., 6059.

170. All actions, claims or demands against the secretary-treasurer, resulting from his administration, are prescribed in five years from the day in which such actions, claims or demands originated.

171. The office of the secretary-treasurer is established in the place where the sessions of the council are held, or in any other place fixed, from time to time, by resolution of the council; provided the same be not in an hotel, inn, or place of public entertainment, in which intoxicating liquors are sold. — R. S. Q., 6060.

172. The secretary-treasurer and the assistant-secretary-treasurer are also officers of all courts established in the province, and may be dealt with as such by them, whenever such courts deem it necessary.

Note : — For other duties of the secretary-treasurer see Arts. 260, 331, 371, 372, 373, 732, 954, 998.

Section II. — Of the Auditors

173. Every municipal council is bound to name one or two auditors in the month of March of each year.

174. The auditors enter on their functions as soon as they are sworn to discharge well and faithfully the duties of their office.

They remain in office until the entry into office of their successors.

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175. No one can be appointed an auditor who is unable to read and write.

176. The auditors are bound, in the month of January in each year, to make an examination of, and to report to the council, before the twenty-fifth day of the same month, respecting all accounts of the corporation and all accounts relating to any subject falling within the jurisdiction of the council.

The council may require the auditors to make other similar examinations and to report at any time during the year. — 55-56 Vic., ch. 44, s. 1.

Section III. — Of Appointments by the Lieutenant-Governor

177. Whenever a municipal council has allowed the prescribed delay to expire without making the appointment of any officer, which it is bound to make in accordance with the provisions of this code or of its by-laws, the lieutenant-governor may make such appointment, with the same effect as if it had been made by the council.

This article does not apply to the secretary-treasurer. — R. S. Q., 6052.

178. In the event of such omissions on the part of the council, the secretary-treasurer, or, in his default, the head of the council, is bound without delay to notify the lieutenant-governor thereof by letter addressed to the provincial secretary.

Any rate-payer of the municipality may give this information to the lieutenant-governor.

179. All appointments made by the lieutenant-governor must be notified to the head or to the secretary-treasurer of the council, by letter from the provincial secretary; and the secretary-treasurer is bound at once to inform the person appointed thereof, by special notice.

180. The lieutenant-governor in council can appoint to municipal offices only those persons who are eligible for the offices which they are called upon to fill. — R. S. Q., 6063.

181. The lieutenant-governor may revoke any appointment of a municipal officer made by him; and, if he deems it necessary, replace such officer by another.

Section IV. — Miscellaneous Provisions

182. The council, in addition to those whom it is bound to appoint, may appoint all such other officers as are necessary to carry into effect its orders and the provisions of this code.

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183. Municipal officers, in office at the time of the coming into force of this code, are maintained in their offices, until they are placed under the provisions of this code.

184. If the place of any municipal officer becomes vacant, such vacancy must be filled by the council within the thirty days next following.

185. Every appointment or removal of a municipal officer made by the council, is made by resolution of the council; such resolution must be communicated without delay, by the secretary-treasurer to the person who is referred to therein.

186. Every municipal officer who is bound to take the oath of office, before entering upon his duties, must do so within the fifteen days which follow the notice of his appointment. In default of his so doing he is deemed to have refused to discharge the duties of the office to which he is appointed, and is liable to the penalties prescribed for such refusal.

He may, nevertheless, until the vacancy caused by his refusal be filled up, enter upon his functions and exercise the same if he is capable of doing so, without prejudice to costs of proceedings instituted against him.

187. Any certificate attesting that an oath of office has been taken by any municipal officer, must be filed without delay, in the office of the council, by the person who has taken such oath.

188. No act, duty, writing or proceeding, executed in his official capacity by a municipal officer who holds office illegally, can be set aside solely from his so holding such office illegally.

189. Every municipal officer may be removed by the council that appointed him. Any municipal officer, appointed by the lieutenant-governor, may be, in like manner, removed by the council under which he is acting, provided always that such removal be approved by the lieutenant-governor.

190. Every officer appointed to replace another, holds office only for the remainder of the time for which his predecessor was appointed.

191. Every municipal officer who has ceased to discharge the duties of his office, is bound to deliver within eight days next following, at the office of the council, all the moneys, keys, books, papers, articles, insignia, documents, and archives belonging to such office. — R. S. Q., 6064.

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192. If any municipal officer dies, or absents himself from the province, his representatives are bound, within one month from such death or absence, to deliver at the office of the council, the moneys, keys, books, papers, articles, insignia, documents, and archives belonging to the office so held by him. — R. S. Q., 6065.

193. The corporation is entitled, in addition to any other legal recourse whatsoever, to recover by process of revendication, from such officer or his representatives, all such moneys, keys, books, insignia, or archives, with costs and damages.

Every judgment rendered in any such action may be enforced by coercive imprisonment against the person condemned, whenever such imprisonment is demanded by the action.

194. The corporation may exercise the same rights and obtain the same remedy against all other persons having in their possession, and refusing to deliver up such moneys, keys, books, insignia and archives.

195. Every person who refuses or neglects to obey any lawful order of any municipal officer, given in virtue of the provision of this code or of municipal by-laws, incurs for each offence a penalty of not less than one or more than five dollars, saving cases otherwise provided for.

Every person who hinders or prevents or attempts to hinder or prevent, a municipal officer in the exercise of his functions, incurs for each offence a penalty of not less than two nor more than ten dollars, and is further responsible for all damages caused by him towards those who have sustained them.

196. Every municipal officer in whose hands is deposited or filed any document whatsoever, is bound, on demand, to give a receipt therefor, under the penalty prescribed in article 103. Should the document deposited or filed form part of the archives of the council, it is the duty of the municipal officer, with all possible speed, to file it among them, under the same penalty.

197. Whenever an act must be executed by more than two municipal officers, it may be validly executed by the majority of such officers, save in special cases otherwise provided for.

198. The council cannot, in any manner, discharge or exempt its officers from the performance of the duties imposed by this code, except in particular cases, where such power is conferred upon it.

199. The corporation is responsible for the acts of the officers of the council, in the execution of the functions in which they are em-

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ployed, and also for all damages resulting from their refusal to discharge or negligence in discharging their duties, saving its recourse against such officers.

200. Municipal officers are liable for their acts, or in damages arising from their refusal or neglect to discharge their duties, to the corporation only; save in so far as penalties incurred by them are concerned, which penalties may be recovered according to the rules of the second title of the third book.

Decisions. — 1. The Mayor is a municipal officer within the meaning of art. 200. *Morin* vs *Gagnon*, 9 Rl. L., 673 Q. B.

2. A municipal officer may be compelled by *mandamus* even after the expiration of the statutory delay to do what he should have done before such expiration. *Déchêne* vs *Fairbairn*, S. C. Rev. 31 May 1886. Johnson, Jetté and Papineau, J. J.

3. A municipal corporation has no action in warranty for any fraud, malice or bad faith; only its recourse for damages. *Leclerc* vs *Corporation St. Joachim de la Pointe-Claire*, 7 L. C. J. 83.

4. A corporation, having passed a by-law to open a road over a person's property, and resolutions to carry into Review a judgment against its laborers sued for trespass in the execution of such by-law, is liable for any damage incurred by them at the suit of the proprietor claiming to have been injured by the opening of such road in an illegal manner and without observing the formalities required by the Municipal Code. *Callaghan* vs *Corporation of St. Gabriel West*, 4 Q. L. R., p. 50 S. C.

CHAPTER THIRD

OF PERSONS BOUND TO ACCEPT MUNICIPAL OFFICES AND OF THOSE INCAPABLE OR EXEMPT FROM DISCHARGING THEM

SECTION I. — OF PERSONS BOUND TO ACCEPT MUNICIPAL OFFICES

201. Whosoever is capable of discharging any municipal office in the municipality, and is not exempted from so doing, is bound to discharge such office if he is thereunto appointed, and to perform all the duties thereof, under the penalties prescribed by-law.

No one, however, is bound to accept or to continue in the discharge of the office of secretary-treasurer.

male

202. Every male resident of full age in a municipality, not declared disqualified by a provision of this code, is capable of discharging a municipal office.

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SECTION II. — OF PERSONS DISQUALIFIED FOR MUNICIPAL OFFICES

203. The following cannot be appointed to or fill municipal offices:

1. Minors ;

2. Persons in holy orders, and the ministers of any religious denomination ;

3. Members of the Privy Council ;

4. The judges of the court of Queen's bench, of the superior court, and of the court of vice-admiralty, district or police magistrates and sheriffs;

5. Officers on full pay of Her Majesty's army or navy, and the officers or men of the provincial police force ;

6. Keepers of taverns, hotels or houses of public entertainment, or persons who have acted as such within the twelve preceding months.

7. Traders licensed for the exclusive sale of intoxicating liquors.

Decisions. — 1. Sec. 6 of art. 203 applies only to those within the limits of the municipality. *Delage* vs *Germain*, 12 Q. L. R. 149.

2. Held : When by the allegations of plaintiff's demand it is claimed that defendant is disqualified from holding the office of Municipal Councillor because he was at the time of his election and of the institution of the proceedings a hotel keeper within the meaning of article 4213 R. S. Q., it is incumbent on Plaintiff to prove said allegations beyond doubt.

The delays fixed by arts. 4275 et seq. for bringing an action for disqualification are *de rigueur*.

Proof of plaintiff's status is sufficiently established by certified extracts from valuation roll and list of electors and identification by the secretary-treasurer of the municipality. *Tremblay* vs *Christin*, 6 Rev. de Jur. 93.

204. Whosoever has no domicile or place of business in a municipality is incapable of exercising any municipal office of such municipality, except those of secretary-treasurer, auditor, valuator or special superintendent.

205. No person receiving any pecuniary allowance or other consideration from the corporation for his services, or having directly or indirectly, by himself or his partner, any contract or interest in any contract with the corporation, can be appointed a member of the council of the said corporation, or act as such.

Nevertheless a shareholder in any incorporated company, which has any contract or agreement with any corporation, is not disqualified from acting as a member of the council of such corporation.

The word "contract" used in the first provision of this article does not extend to any lease, nor to any sale or purchase of lands,

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nor to any loan of money, nor to any agreement respecting any of these acts.

Decisions. — 1. An alderman of the city of Montreal who furnished materials to a contractor to execute a contract with the city renders himself disqualified. *Stephens* vs *Hurteau*, 19 R. L. 38; 6 M. L. R; S. C. 148.

2. The surety of a contractor for works for the city of Quebec is ineligible as an alderman. Nor is it sufficient for the surety to notify the contractor that he ceases to be such surety. He must also be released by the city. *Beaubien* vs *Béland*, 14 L. N. 390.

3. A municipal councillor who furnishes materials to a contractor for the execution of a contract which the latter has with the corporation, does not thereby forfeit his seat. *Poulin* vs *Limoges* and *the Town of Maisonneuve*, 7 Q. O. R., S. C. 253.

4. Petty sales for small amounts in the ordinary course of business are not to be regarded as contracts in the sense of art. 205. *Gaudry* vs *Dazé*, 6 Q. O. R., S. C. 518.

5. A councillor who receives a small sum from the corporation, no matter how small the sum, for work and labour done on a street of the municipality is thereby disqualified; nor is the offence purged by the return of the amount. *Bouchard* vs *Bélanger*, 8 Q. O. R., S. C. 455.

206. Other disqualifications, relative to certain municipal offices, are prescribed in the provisions respecting these offices.

207. Whoever has been appointed to any municipal office for which he becomes disqualified during his exercise of such office, is bound to give without delay, at the office of the council, a notice alleging the reasons of his disqualification, and tendering his resignation.

Until such notice is given, such person is deemed to have continued in the exercise of such office, and is liable to all penalties, prosecutions and other rights of action set forth in this code.

208. If the disqualification of a person appointed to a municipal office or holding the same is notorious or sufficiently established, the council may by resolution, declare the office of such person vacant, saving any recourse on the part of the person appointed. The vacancy must then be filled in the ordinary manner and within the delay prescribed.

Decisions. — 1. Vacancies caused by legal incapacity ought to be declared before being filled. *Paris* vs *Couture*, 10 Q. L. R. 1.

2. Council cannot declare a seat vacant without giving notice of its proceedings to the councillor affected. *Town of Lachute* vs *Burroughs*, 18 R. L. 1.

3. Where a councillor resigns *séance tenante*, the vacancy may be filled at once if the other councillors are all present. *Boissonnault* vs *Couture*, 11 Q. O. R., S. C. 523.

4. This article does not justify a municipal council in declaring the seat of a councillor vacant when the person unseated has made sworn

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declaration of his property qualification and when the grounds of disqualification alleged are doubtful. A writ of *mandamus* lies to order the council to restore the ejected member to his privileges as councillor. *Pelletier* vs *Corporation Village of Lorimier*, 17 Q. O. R., 509, S. C.

SECTION III. — OF PERSONS EXEMPT FROM MUNICIPAL OFFICES

209. The following persons are not bound to accept any municipal office, nor to continue to hold the same :

1. Members of the Senate, of the House of Commons, of the Executive Council and the Provincial Legislature ;

2. All civil functionaries, the employees of the Federal and Provincial Legislature, and the officers of the militia staff ;

3. Advocates, notaries, provincial land surveyors, physicians, apothecaries and teachers engaged in their respective professions ;

4. Licensed pilots and persons engaged in navigation ;

5. Any miller, being the only person employed as such in a mill ;

6. Persons of over sixty years of age ;

7. Gaolers and keepers of houses of confinement or correction or of reformatories ;

8. All persons employed on iron or wooden railways.

Decision. — Employees in the office of wood-measurers under 40 Vic., ch. 16. (Can.) are exempt from municipal office. *Corporation of St. Romuald* vs *McNaughton*, 8 Q. L. R. 336.

210. Any person, having discharged any municipal office during the two years next preceding, may refuse to accept any office whatever under the same council during the two years next after such service.

211. Any person actually engaged in an office under any municipal council may, while he is discharging the duties of such situation, refuse to accept any other office under the same council.

212. Any person who has paid a penalty for refusal to accept any municipal office, is exempt from filling any office whatsoever, under the same council, during the period for which he had been appointed.

213. Any person, who has been appointed to a municipal office from which he is exempt, or who, while filling any office, becomes exempt, and desires to avail himself of such exemption, is bound to lodge in the office of the council a special notice to that effect, within the fifteen days following the notification of his appointment, or upon the day when he becomes exempt from filling such office.

In default of his so doing, he can no longer claim his exemption.

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CHAPTER FOURTH

OF MUNICIPAL NOTICES

SECTION I. — GENERAL PROVISIONS

214. Every notice given under the provisions of this code or of the orders of a municipal council, or for municipal purposes, must be drawn up, and published or served in accordance with the formalities prescribed in this chapter.

215. Every notice so given is either public or special.

The public notice must be in writing, but the special notice may be given either in writing or verbally, except in particular cases, in which a special notice must be given in writing. — R. S. Q., 6067.

216. All notices in writing must contain:

1. The name of the municipality, when such notice is given by an officer or by the head of such municipality ;

2. The names and signature of the person who gives it, and his official capacity ;

3. A sufficient description of those to whom it is addressed ;

4. The place where it was made and the time when it was made;

5. The object for which it is given ;

6. The place, day and hour in which those summoned to answer such notice must do so.

217. Public notices are published; special notices are served.

218. Every copy of a notice in writing which must be served, published, posted up or read is attested, either by the person who gives such notice, or by the secretary-treasurer of the corporation under whose control such person acts.

219. The original of every notice in writing must be accompanied by a certificate of publication or of service. — The original of such notice and the certificate which accompanies it must be filed by the person who has given it in the office of the council, to form part of the municipal records.

220. The certificate is drawn up by the person who published or served the notice; it must contain :

1. The residence, name and signature of the person who has given it, and his official capacity;

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2. The description of the manner in which the notice was published or served;

3. The place, day and hour of publication or of service.

The truth or the fact set forth in such certificate must be attested under the oath of office of the person giving it, if such person has taken an oath and if not, by his special oath.

This certificate is written either on the original notice or on a paper annexed thereto. — 52 Vic., ch. 54, s. 2.

221. In the case of a special notice given verbally, the affirmation under oath of the person who served such notice takes the place of the certificate of service; this affirmation is only required in case of contestation, and must contain the object of the notice.

222. Every owner of land or rate-payer, domiciled without the limits of a municipality may, by a special notice filed in the office of the council, appoint an agent to represent him for all municipal purposes.

223. Any person who has acquiesced in that which is required by a notice, or who has in any manner whatsoever become sufficiently acquainted with its tenor or object, cannot thereafter avail himself of the insufficiency or informality of such notice, or of the omission of its publication or service.

Section II. — Of Special Notices

224. Every special notice must be drawn up or given in the language of the person to whom it is addressed, unless such person speaks a language other than French or English.

The special notice addressed or given to any person who speaks neither the French nor the English language, or who speaks both of these languages, is given to him in either language.

225. The service of a special notice given in writing is effected by leaving a copy of the notice with the individual to whom it is addressed, in person, or with a reasonable person at his domicile or at his place of business, even when it is occupied by him in partnership with some other person; except in cases where the service is made by mail.

226. Every special notice in writing addressed to an absent proprietor or rate-payer, who has appointed an agent residing in the municipality, must be served on such agent, in the same manner as on a resident proprietor. — If an agent resident in the municipality has not been appointed every such notice is served by lodging in the post-office of the locality a copy thereof in a sealed and registered

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envelope addressed to the absent proprietor or rate-payer, or to any other agent he may have appointed.

227. A special verbal notice is given by the person who should give it, or, on his behalf, to the individual to whom it is addressed, in person, or to a reasonable person at his domicile, or at his place of business, provided such individual is domiciled within the limits of the municipality. — If such individual is absent, the special verbal notice intended for him is either communicated to his resident agent, if he has appointed one, or is given to himself personally, or to a reasonable person, at his domicile, or at his place of business; if not, the notice must be communicated by post as a special notice in writing.

228. No one is bound to give a special notice to any proprietor absent, who has not appointed an agent, unless such proprietor has made known his address in writing, by filing the same in the office of the council.

229. Special notices may be served between the hours of seven o'clock in the morning and seven o'clock in the evening, and even upon holidays. Special notices, however, cannot be served at places of business except upon juridical days, and between the hours of nine in the morning and four in the afternoon.

230. If the doors of the domicile or place of business, where service of a special notice in writing should be made, are closed, or if there is no reasonable person therein, service is effected by affixing a copy of the notice on one of the doors of the domicile or place of business.

231. The intermediate delay after a special notice, dates exclusively from the day on which such notice was served.

Section III. — Public Notices

232. The publication of a public notice for local municipal purposes is made by posting up a copy of such notice at two different places in the municipality, from time to time determined on by resolution of the council.

In default of localities determined upon by the council, the public notice must be posted upon or near the principal door of at least one place of public worship, if any there be, and at some other place of public resort in such municipality.

In either case, if there is a Roman Catholic church in the municipality, the notice must be posted upon the principal door of such church. — R. S. Q., 6068.

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233. When a rural municipality is adjacent to a city, town or village municipality incorporated under any act whatsoever, one of the localities determined upon by the council of the rural municipality, for the posting of public notices, may be situated in such city, town or village municipality.

The word "town" in this article applies to all cities or towns erected into municipalities under this code or any other law, except the cities of Quebec, Montreal and Three Rivers.

234. The local council may also, by resolution, fix one or more localities in the municipality, or in a neighboring city, town, or village municipality, if such city, town or village municipality forms part of the same parish or of the same township as the former, in which any public notice must be read out aloud in a distinct manner, on the Sunday next, following the day on which the same was published at the close of divine service, if such service has been held.

The omission to read this notice does not invalidate the publication of the notice, but the persons who were bound or who undertook to read it thereby incur a penalty of not less than two nor more than ten dollars.

235. In so far as respects a public notice given for county purposes, the same is published in all the local municipalities to the inhabitants whereof it is addressed. It is posted up and read in the same manner as public notices given for local purposes in such municipalities.

The officers of the county council giving such notice may, by letter, order the secretary-treasurer of each such local municipality, after having transmitted to him as many copies of such notice as are requisite, to provide that the same be posted up and read as required, and that a certificate of the publication thereof be transmitted to them without delay, under the usual penalties.

236. Every time a notice is ordered to be published in one or more newspapers, such notice must be inserted in newspapers published at least once a week in the county, if any there be; if not, in newspapers of the district, or of the neighboring district, if no newspapers are published in the first district.

The same rule applies when such notice must appear in two newspapers published in different languages.

237. No notice can be inserted in English and in French in newspapers published in one of these languages only.

238. Every public notice convening any public meeting or for any object whatever must be given and published seven clear days be-

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fore the day appointed for such meeting or other proceeding, except in cases otherwise provided for.

239. Except in cases otherwise provided for, the intermediate delay after a public notice dates from the day on which such notice has been made public, in virtue of article 232 or of article 235; if it is ordered that the notice must be published in a newspaper, the intermediate delay dates from the day of the first insertion of such notice; if the notice is published in several newspapers upon different days, the intermediate delay dates from the day of the first insertion made in the newspaper which published such notice last. In all cases the day on which the notice was made public does not count.

240. Public notices are applicable to and binding upon proprietors or rate-payers domiciled out of the municipality, in the same manner as they are upon residents, except in cases otherwise provided for.

CHAPTER FIFTH

OF THE LANGUAGES TO BE USED IN THE COUNCIL AND IN MUNICIPAL PROCEEDINGS.

241. In the sessions of council, whoever has a right to be heard may use either the French or the English language.

242. The books, records and proceedings of every municipal council are kept, and all certificates of publication or service, and every other document produced or filed in the office of the council, are written in either the French or the English language.

243. In any municipality for which there is no order in council, in virtue of the tenth section of the consolidated municipal act of Lower Canada, or of the following article, the publication of every notice, by-law, resolution or order of the council, by posting, reading aloud, or insertions in the newspapers, must be made in the French and English languages.

In every local municipality for which there is such an order in council, the publication of every notice, by-law, resolution or order of a county council, and of every notice from the secretary-treasurer of the county council, by poster, by reading or in the newspapers, may be made only in the language prescribed in such order in council, in place of being made in English and French. — R. S. Q., 6069.

Decision. — One language suffices in those counties where permitted before the promulgation of the Municipal Code, by order of governor-in-council. *O'Shaughnessy* vs *Corporation Ste. Clothilde de Horton*, 11 Q. L. R., 152.

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244. The lieutenant-governor, by an order in council, upon a petition being made to him to that effect by any municipal council, may declare that the publication of any public notice, by-law, resolution or order of the council in such municipality, except such as are required to be made in the *Official Gazette* of the province, shall be made thereafter in one language only. Such language is determined by the said order in council.

The resolution under which the petition of the council is made cannot be adopted until after a public notice to that effect has been given to the inhabitants of the municipality.

A copy of such order by the lieutenant-governor in council is transmitted without delay to the secretary-treasurer of the municipality to which it applies and also to the secretary-treasurer of the county council. — 52 Vic., ch. 54, s. 3.

245. The provincial secretary must publish the order in council in the *Quebec Official Gazette;* and from the date of such publication, every public notice, by-law, resolution or order of the council may be published solely in the language ordered thereby, except in the *Official Gazette* of the province.

Nevertheless, the simultaneous use of any other language does not render the document published in such language invalid.

TITLE THIRD

PARTICULAR RULES APPLICABLE TO COUNTY CORPORATIONS

CHAPTER FIRST

OF THE COUNTY COUNCIL

General Provisions

246. The county council is composed of the mayors in office of all the local municipalities in the county which are subject to the provisions of this code.

Such mayors bear the title, in the county council, of "county councillors".

247. The head of the council is called the "warden", and is chosen from among the members who compose the council.

SECTION I. — OF THE WARDEN

248. The warden is appointed by the members of the county council, during the month of March in each year.

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In a county municipality newly established, the appointment of the first warden takes place at the first general session of the council held after the corporation is organized, or at the special session convened for that purpose in conformity with article 257.

249. When the office of warden becomes vacant, the council must proceed to the appointment of a new warden at the next general session, or sooner at a special session convened for that purpose.

Decision. — Although the municipal code contains no special provision on the subject, a warden may resign his office; and this resignation takes effect upon its acceptance by the county council. The resignation may be given verbally to the council in session. The power to name a warden implies the right to accept his resignation and to name a successor. The acts of a warden *de facto* bind the corporation, and cannot be annulled for the simple reason that he has illegally exercised office. A municipal corporation may ratify the unauthorized acts of its officers, or persons pretending to act as such, provided that these acts are within the scope of their powers. *The Corporation of the County of Pontiac* vs *The Pontiac Pacific Junction Railway Co.*, 17 S. C. R., 406, 11 L. N. 370.

250. Whenever the county council allows the delay for the appointment of a warden to expire without making such appointment, the lieutenant-governor may make the appointment with the same effect, according to the rules laid down in articles 177, 178, 179, 180 and 181.

251. The warden holds office from his entry into the same until the appointment of his successor, except in the case mentioned in the following article.

252. The warden appointed by the council may be at any time removed from his office by a resolution approved of by the vote of two thirds of the members of such council, provided that his successor be appointed at the same time and by the same resolution.

253. The appointment of a warden made by the council may be objected to and contested by the members of the council and by no one else.

Such contestation is begun, tried and decided in conformity with the procedure set forth in chapter seven of title four of this book.

254. Whosoever has been appointed to the office of a warden, and refuses illegally to accept such office, incurs a penalty of forty dollars.

255. In every newly organized municipality, until the appointment of a warden has been made, and in every other municipality, during any vacancy in the office of warden, the duties of such office are discharged by the registrar of the county, saving the provisions respecting the presidency at the council board.

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SECTION II. — OF THE SESSIONS OF COUNTY COUNCILS

256. The ordinary or general sessions of county councils are held on the second Wednesday in each of the months of March, June, September and December, any by-law in force at the time of the coming into effect of this code to the contrary notwithstanding.

257. In a newly organized county municipality, a special session of the council must be held as soon as possible after the organization of the corporation.

Such first session is convened by the registrar of the county, and presided over by him until the appointment of the warden.

258. The sessions of the council are held in the chief-place of the county.

If, at the time of the convocation of the first session of the council by the registrar, the chief-place has not been determined upon, such first session is held at the place chosen by the registrar, and the council continues to hold its sittings there until the chief-place has been fixed upon.

259. The quorum of the council is five, if the members composing it number eight or over, and, if less, the majority is the quorum. — R. S. Q., 6070.

260. The notice of convocation of the special sessions of the county council, as well as the notice of adjournment in the case prescribed by article 139, must be given to the members of the council at least ten days before the day fixed for the session, or the resumption of the adjourned session.

Such notice may be forwarded by registered letter through the post, the postage thereof being prepaid.

CHAPTER SECOND

OF COUNTY DELEGATES

SECTION I. — GENERAL PROVISIONS

261. The delegates of every county corporation are three in number.

These delegates exercise the powers and fulfil the duties which devolve upon them in virtue of this code, in conjunction with the delegates of other county corporations concerned.

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262. The warden is *ex-officio* one of the county delegates.

The two other delegates are appointed by the council from amongst its members after the entry into office of each new warden. They remain in office until their successors are duly installed, even if they have ceased to form part of the council, unless, in the latter case, they have been replaced under the provisions of the following article. — R. S. Q., 6071.

Decisions. — 1. County councils are not obliged to name delegates; they may do so, if desired, at a special meeting preceding the general meeting held on the 2nd Wednesday of March, provided that at this special meeting a warden has been named. *Corporation of the Parish of Ste. Philomène* vs *the Corporation of the Parish of St. Isidore*, 31 L. C. J., 37.

2. Arts. 346 et seq. do not apply to the contestation of the nomination of delegates. One who is interested in a *procès-verbal* has a sufficient interest to proceed against one of the delegates by *quo warranto*. Such *quo warranto* cannot be maintained, if it is only proved that the delegate has taken possession of his office, and exercised it. *Doyon* vs *Stewart*, 30 L. C. J., 260.

3. A member of a board of delegates is not incompetent to act by reason of being a rate-payer in a parish interested in a *procès-verbal* to be submitted to the board.

Such an interest is not a personal interest distinct from the general mass of the rate-payers.

The court upon an appeal from the board will not pronounce the decision such board ought to have pronounced, but annulling the decision given will leave the parties to bring the *procès-verbal* before the board *de novo*. *Gauthier et al.* vs *Corporation of St. Henri de Mascouche et al.*, 6 Rev. de Jur., page 1, S. C.

263. Whenever any one of the delegates dies, or becomes incapacitated from attending to his duties during two consecutive months by absence, sickness or any other cause, or refuses to fulfil such duties during a like period, the council appoints another delegate in his stead, at the first session held after such death, or delay of two months.

If one of the delegates ceases to form part of the council, his successor must be appointed, without delay by the council.

264. If the council neglects or refuses to appoint the delegates whom it is bound to appoint under the two preceding articles, within thirty days after a demand made upon it to that effect, such delegates may be appointed by the lieutenant-governor in the manner set forth in articles 177, 178, 179, 180 and 181, subject, however, to the provisions of article 101.

265. (Repealed by R. S. Q., 6072).

Section II.— Of the Board of Delegates

266. The board of delegates is composed of the delegates from each of the county municipalities, of which the inhabitants or some

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of them are interested in any work or matter which comes under the jurisdiction of the councils of such municipalities.

Decisions. — 1. A member of a board of delegates is not disqualified for the sole reason that he is a rate-payer in one of the parishes interested in a *procès-verbal* submitted to such board for consideration.

2. Such an interest is not a personal interest.

3. The Court sitting in appeal will not pronounce the judgment which the board of delegates should have pronounced but will simply annul the board's decision leaving the parties to begin *de novo* according to law. (*Corporation of Parish of St. Alexandre* vs *Mailloux*, 7 L. R., 417); *Gauthier et al., appellants*, vs *Corporation of the Parish of St. Henri de Mascouche* and *Corporation of St. Louis de Terrebonne, Respondents*, and *The Board of Delegates of the Counties of Terrrebonne and L'Assomption, mis-en-cause*, 6 Rev. de Jur., page 1.

267. The board of delegates sits, for the purpose of taking into consideration and deciding matters within its jurisdiction, whenever required so to do, or whenever it deems necessary, in following the formalities prescribed for the summoning of the meeting.

268. The delegates meet at the time and place indicated in the notice of meeting given to them.

269. The meeting of the board of delegates is convened, upon a requisition in writing, by two members of the board, or by the secretary-treasurer of one of the county municipalities.

Such meeting is convened and held in the same manner as a special session of a county council.

The place where such meeting is held is selected by the members or by the secretary-treasurer who convenes the same.

270. Any person interested in a question submitted or about to be submitted to the board of delegates may require the secretary-treasurer of one of such county municipalities to convene a meeting of the board of delegates, if a meeting of such board has not already been convened, to be held within the fifteen days following.

271. The secretary-treasurer of the county council who called the meeting is, in virtue of his office, the secretary of the board of delegates.

If the meeting has been convened by two members of the board, the secretary-treasurer of the council whereof such two members are the delegates is the secretary of the board. If the two members belong to different councils, the secretary of the board is appointed by the delegates and must be the secretary-treasurer of one of the county municipalities.

The secretary keeps minutes of the proceedings of the delegates, and deposits the same with all other documents of the board in the archives of the council whose officer he is, and he forwards a copy to the office of each of the other county councils interested.

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The secretary-treasurer of each county council shall forward to each local council interested within the county municipality, a copy of every decision of the board of delegates. — R. S. Q., 6073.

272. Three of the delegates summoned to the meeting form a quorum of the board.

273. The meeting is presided over by any one of the delegates present, chosen among themselves. — In the case of an equal division of votes, in their choice of a chairman, the chairman is chosen from among them by lot.

274. Every disputed question is decided by the vote of the majority of delegates present, including that of the chairman. — In the event of an equal division of votes, the chairman has also the casting vote.

Decisions. — 1. If all the members of the board of delegates do not vote on the homologation of a *procès-verbal*, the decision must be declared null and irregular. When the decision is annulled, by reason of the failure to vote of the delegates present, the Court will not render the judgment that the board ought to have pronounced, but will annul the decision given, leaving the parties to act according to law, to submit the *procès-verbal* before the board a second time. *Corporation of Parish of St. Alexandre* vs *Mailloux*, 7 R. L., 417.

2. A board of delegates from two counties has no jurisdiction to deal with a *procès-verbal* of a road entirely situate in one only of the counties. *Lambert et al* vs *Corporation of Megantic*, 7 Rev. de Jur., 162.

275. Articles 100 and 102 apply also to all documents, orders or proceedings of the board of delegates. — Articles 97 and 103 are also applicable to the board of delegates.

TITLE FOURTH

RULES COMMON TO EVERY LOCAL MUNICIPAL CORPORATION

CHAPTER FIRST

OF THE LOCAL COUNCIL

SECTION I.— GENERAL PROVISIONS

276. The local council is composed of seven councillors elected by the electors of the municipality, in the manner hereinafter set forth, or appointed by the lieutenant-governor, where no election has taken place.

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277. The office of municipal local councillor lasts three years, except in the cases of articles 116 and 279.

278. At the first general municipal election held after the coming into force of this code, as well as at the first general election held in every local municipality erected thereafter, or in which there is no council in operation, seven councillors must be elected, or, in default of election, appointed, and they go out of office and are replaced in the manner set forth in the following article.

279. Of the seven councillors elected at such election, or appointed by the lieutenant-governor in default of an election.

1. Two must be replaced at the time of the next general municipal election;

2. Two others at the same period in the year which follows that lastly mentioned;

3. And the three last, also at the same period in the following year.

And so on, in such manner that two local councillors must be elected or appointed two years consecutively, and three every three years.

280. The councillors mentioned in paragraphs one and two of the preceding article must be selected by lot at a session of the council, in the month of December preceding the month of January in which they must be replaced; in default of this being done, the retiring councillors are chosen by lot by the presiding officer of the election in presence of the municipal electors, or are designated by the lieutenant-governor, when they are to be replaced by him.

No election or appointment can take place to fill the offices of such councillors until they have been so selected by lot or designated. — R. S. Q., 6074.

281. The head of the local council is called the mayor.

He is also known and designated as "mayor of the council", or "mayor of the corporation", or "mayor of the municipality", or simply as "mayor", when the name of the municipality, of the council, or of the corporation is sufficiently indicated in the document.

282. Every local councillor remains in office from the taking of his oath of office until the time of the general municipal election at which he is to be replaced, and not beyond that period.

Decision. — A resolution is invalidated if adopted by persons retiring from the council and replaced by others newly elected.

The new councillors ought to be notified of the holding of any meeting of council after their election. *Laroche* vs *Corporation Ste. Emélie de Lotbinière*. 6 Rev. de Jur., 403.

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SECTION II.— OF PERSONS DISQUALIFIED FROM ACTING AS COUNCILLORS

283. No one can be appointed a member of the council of a local municipality, nor act as such, if he does not reside within the limits of such municipality, or if he does not hold his place of business therein, and if he does not possess therein, in his own name or in the name and for the benefit of his wife as proprietor, real estate of the value of at least four hundred dollars, or if it concerns the municipality of the parish of St. Pierre de la Pointe aux Esquimaux, real estate of any value whatever, or if at the time of his election he is not a municipal elector.

On a demand in writing, made before the council by a member of such council, or by a rate-payer to any councillor present, such councillor must, within eight days thereafter, give in writing and under oath a declaration of qualification, containing the description of the real estate on which he bases his qualification and deposit it in the office of the council. — R. S. Q., 6075; 61 Vic., ch. 50.

Note. — The following persons cannot be appointed to or fill municipal offices:

1. Minors;

2. Persons in holy orders, and the ministers of any religious denomination;

3. Members of the Privy Council;

4. The judges of the Supreme Court, of the Court of King's Bench, of the Superior Court, and of the Court of Vice-Admiralty, district or police magistrates and sheriffs;

5. Officers on full pay of Her Majesty's army or navy, and the officers or men of the provincial or local police force;

6. Keepers of taverns, hotels or houses of public entertainment or persons who have acted as such within the twelve preceding months. (Article 4213, Revised Statutes.)

Decisions. — 1. The fact that the councillor leaves his domicile or place of business in a municipality renders his seat vacant. *Loiseau* vs *Lacaille* 2 R. C., 236.

2. The mayor of a city cannot, under the provisions of 40 Vic., ch. 29, sec. 49, base his qualification on a property delivered by him with a promise of sale. *Lachapelle* vs *Lanctot*, 15 R. L., 559.

3. An alderman cannot base his qualification upon a property belonging to a commercial partnership to which he belongs. *Girard* vs *Rousseau* and *The City of Montreal*, 3 M. L. R., S. C., 293.

4. The qualification of municipal councillors is determined at the time of their election. A candidate disqualified at the time of his nomination, by non-payment of taxes, may be qualified later, at the time of his election, by paying the taxes, in the interval: and in such case his election will be maintained. *Bouvier* vs *William, alias Gagnon*, 4 M. L. R., S. C., 381.

5. Arts. 208 and 337 do not authorize municipal councillors to make an inquiry to verify the qualification of one of its members, nor to declare vacant the seat of a member, who, in the opinion of a majority

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of the members of the council is disqualified, as disclosed by the inquiry. A councillor who produces his declaration of qualification, in virtue of art. 283, can only be removed by the Court. *Belzil* vs *The Corporation of Trois Pistoles*, 8 Q. L. R., 165.

6. He who possesses in his own name an undivided third (of the value of $400) in an immoveable is sufficiently qualified as an alderman for the town of St. Henri. It is not essential that an alderman resides in St. Henri if he is qualified by his place of business there. *Taillefer* vs *Leduc*, 7 Rev. de Jur., 295.

7. The usufructuary of real estate worth over $400, is qualified as a municipal councillor. *Flynn* vs *Lamb*, 6 Rev. de Jur., 296, S. C.

8. A municipal councillor, who at the time of his election and the issue of a writ *quo warranto*, was not a British subject cannot validate his election by becoming naturalized pending the suit. *Campeau* vs *Grosboillot*, 17 Q. O. R., 116, S. C. Confirmed in review.

9. A councillor unseated by resolution asks that the officers of the council be enjoined not to proceed to any election to fill his place and that the resolution be declared null and void. Held: that these demands were not incompatible with each other. *Bédard* vs *Municipality of de Lorimier* and *Bayard et al.*, 17 Q. O. R., 141, S. C. Review.

284. Nevertheless, any person domiciled in a village, town or city municipality incorporated by any law whatever, may, if he possesses the other necessary qualifications, be a member of the council of a rural municipality which is adjacent to the municipality in which he is domiciled, provided always, that he does not fill any municipal office in the municipality in which his domicile is situated.

285. No one actually presiding at an election of councillors can be elected councillor at such election.

Section III. — Of Sessions of the Council

286. In every newly organized municipality, the first session of the council is held at the time and place indicated by the warden of the county, in the notice of appointment which he addresses to the person whom he appoints to preside at the first election of the municipality.

If the councillors or some of them have been appointed by the lieutenant-governor, such first session is held at the time and place fixed upon by the person to whom the letter communicating the appointment of the councillors has been addressed.

Until the appointment of the mayor, such first session is presided over by one of the councillors who compose the new council.

Such session is an ordinary session of the council.

287. Ordinary or general sessions of the council take place, also, on the first Monday in each month, unless it be otherwise provided by the council in virtue of article 611.

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288. The council sits at the place selected for the first session, in virtue of article 286, until by resolution it shall have fixed upon some other place.

289. Four members form a quorum of the council.

Decisions. — 1. Where there are only three councillors present, including the chairman, the latter cannot form a quorum by his casting vote. *Bissonnette* vs *Nadeau*, 1 Q. O. R., S. C. 34.

2. A quorum cannot be completed by a councillor who occupies his office illegally, and this councillor cannot be deemed an officer *de facto*, according to the provisions of art. 120, when the three councillors who have voted with him were aware of his disqualification, this disqualification being also notorious. *Rouleau* vs *The Corporation of St. Lambert*, 10 Q. O. R., S. C. 69 and 85.

290. The notice of convocation of every special session of the local council, as well as the notice of adjournment in the case prescribed by article 139, must be given to the members of the council at least two days before the day fixed for the session or the resumption of the adjourned session.

CHAPTER SECOND

OF MUNICIPAL ELECTORS

291. Every person who, at the moment he exercises such rights and privileges, comes within the following conditions, is a municipal elector, and as such has the right to vote at the election of local councillors, and to exercise all the rights and privileges conferred on municipal electors by the provisions of this code, subject to article 497 :

1. He must be of the male sex, have attained the age of majority, and be a British subject.

2. He must have been in possession, in the municipality in which he seeks to exercise the right of an elector, either in his own name or in the name and for the benefit of his wife, as appears by the valuation roll in force, if there is one, as proprietor of real estate of the actual value of at least fifty dollars, or as resident, tenant farmer or lessee, or as occupant by any title whatsoever, of real estate of the annual value of at least twenty dollars.

3. He must have paid all the municipal and school taxes due by him at such period, or at a previous period which any council may fix by by-law, provided that such date be not fixed before the fifteenth of December.

4. His name must be entered in the valuation roll, if there is one

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in force in the municipality, either as proprietor, lessee or occupant. — R. S. Q., 6076.

Note. — "Spinsters and widows shall have a right to be entered upon the list of electors in any city, town, village or rural municipality, and to vote at all municipal elections therein and upon all questions submitted to such electors, when otherwise qualified as by law provided.

They shall also have a right to vote for school commissioners or trustees, and to vote on all school matters submitted to the electors, when otherwise qualified as by law provided.

The laws respecting public instruction and town corporations, the Municipal Code, and all charters of cities, towns, villages, shall be so interpreted as to give effect to the preceding section.

This act shall not affect cities or towns where this matter has been regulated by charter."—55-56 Vic., cap. 35.

Decisions. — 1. A person whose name is inscribed on the valuation roll as proprietor of an immoveable, but who really has never owned the immoveable in question and has never been proprietor of it, has not the right to vote. *Vinet* vs *Fletcher*, 18 R. L., 672.

2. In order to have the right to vote at the municipal elections, the elector must possess, up to the time of voting, all the qualifications required by art. 291. *Cadot* vs *Pelletier*, 3 Rev. Jur., 19.

3. A license for dogs and horses is not a municipal tax the exigibility of which renders a person ineligible for the office of councillor. *Gauthier* vs *Chevalier*, 7 Q. O. R., S. C. 179.

4. Municipal taxes are not subject to compensation. *Ibid.*

5. An occupant does not owe the taxes on an immoveable which he occupies, these taxes being due by the proprietor, and the neglect of the latter to pay these taxes before the election does not deprive the occupant of his right to vote. *Desjardins* vs *Tweedie*, 7 Q. O. R., S. C. 74.

6. The error of a secretary-treasurer in informing a tax-payer, who presents himself to pay his taxes, that the latter owes nothing, does not deprive the tax-payer of his right to vote. *Ibid.*

7. A municipal elector who owes his taxes is not eligible as councillor, nor can he compensate the amount of his taxes by an unliquidated claim which is disputed. *Gauthier* vs *The Municipality of the Village of St. Louis du Mile End*, 9 Q. O. R., S. C. 418.

CHAPTER THIRD

ELECTIONS OF LOCAL COUNCILLORS

SECTION I. — TIME OF HOLDING GENERAL ELECTIONS; NOTICE REQUIRED THEREFOR

292. The general elections for all local municipalities take place every year, on the second Monday of January, at ten o'clock in the morning.

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293. In every newly erected local municipality, the first general election of councillors must be held at the same hour on the day fixed by the warden of the county, which day shall not be less than fifteen nor more than thirty days, after the territory comes within the conditions required to form a new municipality, in the case of articles 29, 31, 35 and 37; and in the case of articles 32, 37*a* and 39, the first general election must be held, in the same manner, on a day which shall not be less than fifteen, nor more than thirty days, after the date of the publication of the resolution.

The subsequent general elections of such municipality take place at the period fixed in the preceding article. — R. S. Q., 6077.

294. Public notice of each general election, in every local municipality, must be previously given by the secretary-treasurer or by the mayor, announcing such election, and calling together a general meeting of the electors of the municipality, at the time and place indicated, for the purpose of electing their councillors.

In the case of the first election subsequent to the erection of a new local municipality, the notice must be given by the warden of the county.

295. The omission to give such public notice does not prevent the meeting of the municipal electors from being held for such election, except in a newly erected municipality; and each of the persons who have neglected to give such notice within the prescribed delays, incurs a penality of not less than five or more than twenty dollars. — R. S. Q., 6078.

Decision. — **Lack of notice in the English language does not annul an election when it is shown that nobody suffered therefrom and no prejudice has operated, *Marquis* vs *Couillard*, 10 Q. L. R., 98. C. C.**

Section II. — Of the Officer Presiding at the Election

296. The election of local councillors is presided over by a person appointed to do so by a resolution of the local council. He may be one of those members of the council who do not go out of office at the time.

If no one is appointed to preside at such election, or if the person appointed is absent, the secretary-treasurer of the council is *ex-officio* the presiding officer at the election.

Decisions. — **1. An election presided over by one of the councillors going out of office will be declared null. *Globensky* vs *Champagne*, 2 R. C., 235.**

2. The assistant secretary-treasurer has the same right to preside as the secretary-treasurer. *Morrier* vs *Rasconi*, 1 R. L., 140.

3. The council may select its secretary-treasurer to preside at the meeting of electors. *Marquis* vs *Couillard*. 10 Q. L. R., 98.

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4. A meeting of electors may choose for its president one who is not a municipal elector, notwithstanding the presence of the secretary-treasurer. *Legault* vs *Paiement*, 2 R. C., 235.

297. The first election of a newly organized municipality is presided over by a person appointed for that purpose by the warden of the county.

298. If, at the time fixed for the election, the person who should preside thereat and the secretary-treasurer are both absent, or if neither has been appointed, the meeting is presided over by the senior justice of the peace, or, in the absence of a justice of the peace, by any person at the meeting chosen by the majority of electors present.

299. The person presiding at the election cannot vote thereat, except in the case specified in article 321.

300. The person presiding at an election of councillors is a keeper of the peace from eight o'clock in the morning of the day on which the meeting of municipal electors is held, until nine o'clock in the morning of the day which follows the close of the election. He possesses in this respect all the powers of justices of the peace, and may exercise them throughout the whole municipality.

301. The presiding officer at the election may moreover, for the purpose of preserving peace and public order :

1. Swear in as many special constables as he deems necessary;

2. Require the assistance of all justices of the peace, constables, and other persons residing in the municipality, by verbal or written order ;

3. Commit on view to the custody of a constable or of any other person, for a period of not more than forty-eight hours, any one breaking the peace or disturbing public order ;

4. Cause such offender, upon summary conviction, to be imprisoned in the common gaol of the district, or in any house or other place of detention within the limits of the municipality of the county, for a period not exceeding ten days. — R. S. Q., 6079.

Decision. — 1. A presiding officer has not the right to cause to be imprisoned by written order persons who disturb the meeting by shouts or threats, where it is shown that these persons merely protested against the unfair conduct of the presiding officer. The latter, in such case, is subject to damages for wrongful imprisonment. *Trépanier* vs *Cloutier*, 11 Q. L. R., 86.

302. Within the three days next after the close of the election, the officer presiding must give to each of the councillors elected special notice of his election.

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If he is the presiding officer at the first election of a newly erected municipality, he must, in the special notice given to the councillors elected, designate the time and place of the first session fixed upon by the warden of the county. If the latter has not fixed the time or place for the session, the presiding officer himself does so.

303. Within the eight days next after the close of the election, the presiding officer must make the result of the meeting known to the warden or to the secretary-treasurer of the county council; if there has been an election of councillors, he must give at the same time the names, surnames, quality and residence of each of the councillors.

Decision. — It is not necessary to proceed against the minutes of an electoral meeting by improbation. *Boileau* vs *Proulx*, 2 R. C., 336.

304. If a poll has been held, the presiding officer must, within the said delay of eight days, deliver up the poll books kept by him at such election at the office of the local council, to be lodged among the archives of such council.

305. Every person who has been appointed, whether by the warden, by the council, or by the court under article 361, to preside at an election of local councillors, is at liberty to decline such office, on his transmitting within four days from the notification of his appointment special notice of his refusal to the warden, the council, or the court which appointed him. In default of his so doing he is no longer at liberty to refuse such office.

306. The services of presiding officer at an election are given gratuitously ; nevertheless, the council must reimburse all expenses necessarily incurred by him on account of the election, and may, moreover, allow him an indemnity for his services.

Section III. — Meeting of Municipal Electors

307. The meeting of municipal electors is held at the place where the local council holds its sessions, and must be opened at the hour of ten in the forenoon of the day fixed for the election, and the proceedings of such meeting shall be reduced to writing either on the books of the proceedings of the council, or in a document which must form part of the archives of the council.

Nevertheless the council of a rural municipality whose sessions are held in a municipality of a city, of a town or of a village, in virtue of article 106, may, by resolution, fix upon another place for the holding of such meeting.

If it is the first election after the erection of a new municipality,

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the meeting is held at the place designated in the notice. — R. S. Q., 6080.

Note. — All public meetings (*a*) required by-law, (*b*) called by sheriff, mayor or other chief municipal officer upon the requisition of twelve or more voters at legislative elections, (*c*) called by any two or more justices of the peace, (*d*) declared to be such by any two justices of the peace, may be placed under the special protection of law, the chairman being clothed with power to cause the arrest of disturbers etc., the whole upon due publication of notice. *Vide* R. S. Q., Arts. 2946-2964.

Decision. — Art. 173 which makes it an offence to disturb an assemblage of persons met together for religious worship or for any social, moral or benevolent object, does not apply to a disturber of a meeting of municipal electoral meeting. Such a meeting may be protected by observing the provisions of R. S. Q., 2946 *et seq.* *Rex* vs *Lavoie*, 8 Rev. Jur., Recorder's Court, Montreal.

308. The presiding officer, after having opened the meeting, requests the electors present to propose those persons whom they wish chosen as local councillors.

Decision. — At a meeting of electors, freedom of discussion must be permitted. *Legault* vs *Piquette*, 2 R. C., 235.

309. The presiding officer is bound to receive and propose as candidates the names of all persons submitted to him, whether verbally or in writing, by at least two of the municipal electors present.

Nevertheless, no one can be proposed for election unless at the time, his name and surname, as well as the names and surnames of his proposers are given.

Decisions. — 1. The nomination of candidates by two electors who do not give their names, but who are perfectly well known, ought to be received by the president. It is for the latter to ask the names of the mover and seconder. *Boileau* vs *Proulx*, 2 R. C., 236.

2. It is not necessary to propose candidates separately. The president must nominate all candidates proposed, verbally or in writing, by two electors. *Legault* vs *Paiement*, 2 R. C., 235.

3. An election will not be annulled by reason of the disqualification from the right of voting of the electors who have presented the candidates elected, if no objection was made at the time of nomination, before the opening of the polls. *Morrin* vs *Rasconi*, 7 R. L., 140.

4. The law does not require the presence of the candidates, at the time of the election, for examination as to their qualification. *Bureau* vs *Norman*, 5 R. L., 40.

5. If one of the candidates is not qualified, and is excluded from office for this reason, the other candidate cannot be declared elected, if he has not obtained a majority of vote. Mere mistakes of officials tha do not affect the right of voting will not annul an election. *Bureau* vs *Menier*, 32 L. C. J., 76.

6. The request to nominate a candidate ought to be made direct to the president, and it is for those who wish for an election, to present themselves and submit the names of candidates to the president. *Tessier* vs *Menier*, 32 L. C. J., 76.

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310. If, after one hour has elapsed from the opening of the meeting, as many candidates as there are councillors to be elected, or fewer candidates than the required number, have been proposed for election, as councillors, the election is declared at an end, and the presiding officer proclaims the candidates proposed for election duly elected.

Decision. — When the president has declared to be elected the seven candidates who have been proposed, the election is over and it is illegal for any voters who may have come after, to propose other candidates, or for the president to grant a poll. If a poll is held under such circumstances, it is illegal ; and a person who may vote at such election, without having the required qualification, cannot be sued for the recovery of the fine of $20.00. *Melançon* and *Sylvestre*, 14 L. C. J., 217 ; *Bezières* and *Turcotte*, 2. R. L., 129.

2. The president can, before the expiration of one hour after the opening of the meeting, proclaim a candidate who has no opponent, and hold a poll for the other candidates. *Huneau* and *Magnan*, R. C., 234.

3. A voter who has been unlawfully deprived of his right of voting, has his recourse in damages. *Bernatchez* and *Hammond*, 7 Q. L. R. 25 ; *Martin* and *City of Montreal*, 6 L. N., 23.

4. When a candidate has been unanimously elected, he is proclaimed elected immediately before the opening of the voting for the other candidates, that is to say, one hour after the meeting is over. *Lizotte* and *Lalancette*, 10 R. L., 480.

5. If the qualification of the voters who have proposed the candidates is not objected to, when the nomination is made, and the poll granted, the president, after, that formality, and the votes about to be registered, cannot change his decision, and declare the nomination irregular for want of qualification of the proposers and seconders. *Laraway* and *Brimmer*, 6 L. C. J., 164.

6. If the election takes place under such circumstances as lead the court to believe that fraud has been committed, and that voters have been deprived of their rights, the election will be set aside. *Sauvé* and *Boileau*, 6 L. N., 257.

7. The vote of a municipal voter registered *after* such voter has refused to be sworn, as required under this article, is void, and shall be so declared by the Court. *Dolbec* and *Portelance*, 6 Q. L. R., 17.

8. Carters engaged by the agent of one of the candidates in a municipal election, to carry voters to the poll, can recover in law from the agent and the candidate severally, the value of their services, the law not having declared such contracts illegal. *Ramage* and *Lenoir*, 15 L. C. J., 219.

9. The voters can agree amongst themselves to vote by list or ticket, and the votes can be registered for six candidates, although the voter may have voted for only one candidates, e. g. that at the head of the ticket. *Huneau* and *Magnan*, 2 R. C., 234.

10. The delay within which to nominate candidates, is one hour after the opening of the meeting. It is not necessary to make a written demand in order to obtain the granting of a poll. *Marquis* and *Couillard*, 10 Q. L. R., 8.

311. One hour after the opening of the meeting, if more candi-

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dates have been put in nomination than there are councillors to be elected, the presiding officer, upon a requisition by five electors present, proceeds without delay to hold a poll and to enregister the votes of the electors present.

Nevertheless, if among the candidates put in nomination there are any to whom there is then no opposition, the presiding officer declares such candidates elected, and the poll is held for the other candidates only.

Decision. — After the expiration of the hour during which nominations are received, and while the presiding officer was counting the electors favourable to each candidate, five electors demanded a poll. This was refused by the chairman who began again to count the votes notwithstanding the protests of the electors who demanded a poll, and declared one candidate elected. This election was annulled. *St. George* vs *Gadoury*, 9 L. N., 99.

312. In the absence of a demand from five electors present to the effect that a poll be held, the presiding officer declares elected councillors the candidates who have the majority of the electors present in their favor, after having established such majority by counting the electors who are in favor of each candidate; twenty electors present may, however, appeal from his decision, by requiring a poll to be held. — R. S. Q., 6081.

Decisions. — 1. If more candidates are proposed than there are vacancies to fill, the chairman should first ascertain which candidate has the majority of votes of those present. It is illegal to oppose two candidates against each other to ascertain which of the two has the majority, when more than two candidates have been proposed.

When a poll has been granted the chairman must proceed to hold it. He cannot thereafter declare one candidate elected in virtue of any understanding between the candidates, particularly when some of the electors object.

If a councillor is elected illegally, he cannot resign and be appointed by the council. The court will annul the resignation and appointment but will not order a new election. *Charland* vs *Corporation of Wotton*, 16 R. L., 60.

2. At a meeting for the election of two councillors opened at 10 a. m. four electors were nominated. At 11 o'clock an elector asked for a show of hands, and when the chairman was about to count them a demand for a poll was made in due form but was refused. Such refusal was illegal and the election made was annulled. *Bragg* vs *Williams*, 9 Q. O. R., S. C. 258.

313. The presiding officer, if a poll is opened, must enter or cause to be entered in a book kept in accordance with the conditions hereinafter prescribed, and in the order in which they are given, the votes of the electors, by entering therein the names and qualities of each.

Decision. — The omission of the occupation or quality of electors in the poll-book is not a cause of nullity unless some real injustice is shown to have resulted therefrom. *Morrier* vs *Rasconi*, 7 R. L., 140.

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314. Every elector may vote for as many candidates as there are councillors to be elected in the municipality, or in the ward, if the municipality is divided in virtue of article 617.

Decision. — See *supra*, *Huneau* vs *Magnan*, cited at No. 9, art. 310.

315. Any person tendering his vote must take the following oath or affirmation before the presiding officer, if required so to do by him, by an elector, by any candidate, or by the representative of any candidate :

I swear (*or* I affirm) that I am entitled to take part in this meeting, that I am duly qualified to vote at this election, that I am at least twenty-one years of age, that I have paid all municipal and school taxes due by me, and that I have not already voted at this election: So help me God.

If such elector refuses to take such oath, his vote must be refused.

316. Any person voting at an election of municipal councillors, without possessing at the time of giving his vote the qualification of a municipal elector, incurs a penalty of twenty dollars.

317. Whenever the presiding officer does not understand the language spoken by one or more electors, he must appoint an interpreter who, before acting, takes before such person presiding the following oath :

I swear (or affirm) that I shall faithfully translate the oaths, declarations, affirmations, questions and answers which the person presiding shall require me to translate, respecting this election : So help me God.

318. Each page of a poll-book must be numbered in writing, and initialed by the person presiding at the election.

319. If an elector takes the required oath, or refuses to take the same, or if objection is made to his vote, mention of each of these facts must be made in the poll book in the following terms, — " sworn " — " refused " — or " objected to ", as the case may be.

320. The presiding officer, at the end of the first day's polling, and at the close of the election, but before proclaiming the candidates elected, must certify under his signature, on the poll-book, the total number of votes entered, from the first to the last entry in the book, and also the total number of votes given for each of the candidates.

321. In case of an equal division of votes, in favor of one or more of the candidates, the presiding officer is bound to vote, even although he is not a municipal elector, under a penalty of not less than twenty or more than fifty dollars.

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322. If, at four o'clock in the afternoon of the first day of the poll, the votes of all the electors present have not been polled, the meeting is adjourned to the hour of ten in the forenoon of the following day, for the purpose of proceeding with the polling of such votes.

323. The election must be closed at four o'clock in the afternoon of the second day. — In a municipality having more than six hundred electors, however, an additional voting day shall, subject to article 322, be allowed for every three hundred electors exceeding the number of six hundred. — R. S. Q., 6082.

324. If at any time after the votes have commenced to be polled, either on the first or on the second day of the said election, one hour elapses without any votes having been polled, the presiding officer must close the election.

Nevertheless, if notice under oath is given to the presiding officer that an elector has been, within the hour last past, prevented from approaching the poll by violence, the election cannot be closed until the expiration of one hour after such violence has ceased.

325. At the close of the election, the presiding officer declares such of the candidates as have obtained the largest number of votes duly elected councillors.

CHAPTER FOURTH

APPOINTMENT OF LOCAL COUNCILLORS BY THE LIEUTENANT-GOVERNOR

326. Whenever :

1. A meeting of the municipal electors for the election of local councillors has not been held within the time prescribed by law, or by public notice, if the election is to be held in virtue of article 361, or the meeting having been held, no election has been had ;

2. Or an insufficient number of councillors has been elected ;

Then it is the duty of the presiding officer at such election, or of the secretary-treasurer of the corporation, to inform the lieutenant-governor of such fact or facts by a letter addressed to the provincial secretary, within fifteen days after the time fixed for such election.

Any municipal elector may give such information to the lieutenant-governor.

327. The lieutenant-governor, as soon as such information is communicated to him, appoints from among the qualified persons in the municipality an equal number of councillors to the number required

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to be elected in the case of the first paragraph of the preceding article, or a sufficient number to complete the number of councillors required in the case of the second paragraph of the same article.

When the municipality is divided into wards, in virtue of article 617, the lieutenant-governor can only appoint councillors for those wards in which no election has taken place.

328. The letter of the provincial secretary, wherein the councillors appointed by the lieutenant-governor are named, is forwarded to the secretary-treasurer of the municipality, or to one of the councillors so appointed.

The person receiving such letter must give, without delay, to every councillor named in it, special notice of his appointment.

If such appointment is that of the first councillors of a newly organized municipality, the person receiving such letter must, in the special notice given to each councillor appointed, at the same time appoint a time and place for the first session of the council.

329. The lieutenant-governor may cancel any appointment of councillors made by him, and if he deems advisable, replace such councillors by others.

CHAPTER FIFTH

THE APPOINTMENT OF MAYOR

330. At the first session after any general municipal election, or after any general appointment of councillors by the lieutenant-governor in the absence of an election, the members present, if they form a quorum, appoint as mayor of the corporation any one of the councillors possessing the necessary qualifications.

331. So soon as the appointment of mayor has been made, the secretary-treasurer must give a special notice of the fact to the warden of the county, as well as to the person appointed, if he was not present at the election.

332. If the appointment of a mayor has not been made by the councillors within fifteen days after such first session, the lieutenant-governor may make the appointment with the same effect, in conformity with the rules prescribed by articles 177, 178, 179, 180 and 181.

333. The mayor remains in office from the moment he takes the oath of office until the appointment of his successor.

Decisions. — 1. The mayor remains in office until the nomination of his successor, even though his term of office as a councillor has expired.

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He is entitled to preside at the first meeting of the council after the elections and to give his casting vote for the election of his successor. *Masson* vs *Leahy*. 11 L. N., 202.

2. The out-going mayor, even though replaced as councillor, remains a member of the council until the election of his successor. He is entitled to receive notice of a special meeting called to name his successor, to preside at such meeting and to vote as provided by-law. *Pichette* vs *Legris*, 20 R. L., 79.

334. Whosoever is appointed mayor, and refuses illegally to accept or discharge the duties of such office, incurs a penalty of thirty dollars.

335. Nobody can be appointed mayor nor act as such, unless he is able to read and write.

Decision.—1. A person who can only read and write with great difficulty, spelling out the words is not qualified for mayor. *Turgeon* vs *Noreau*, 9 Q. L. R., 363.

2. The code does not seem to require that the temporary acting-mayor must be able to read and write. *Belzil* vs *Corporation des Trois-Pistoles*, 8 Q. L. R., 165. S. C.

336. If it happens that amongst the members composing the council no one is able to read and write, one of such councillors, previously selected by lot, must be without delay replaced, by the appointment, by the lieutenant-governor, in the ordinary manner, of a person able to read and write, and possessing the other qualifications required for the office of member of such council.

CHAPTER SIXTH

VACANCIES IN THE LOCAL COUNCIL

SECTION I. — VACANCIES IN THE OFFICE OF COUNCILLOR

337. The office of councillor becomes vacant in each of the following cases :

1. When a person has been appointed councillor who is exempt from serving as such, or when a person discharging the office of councillor becomes exempt during his occupancy thereof, and such person has, in either case, complied with article 213;

2. In the case of refusal to accept or continue to perform such office ;

3. When the councillor's domicile and place of business are no longer within the limits of the local municipality, unless such do-

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micile or place of business is situated in a neighboring municipality forming part of the same parish or township as the municipality for which he is a councillor ;

4. When a councillor, after his appointment, has come under one of the disqualifications established by the law, and has complied with article 207;

5. In the case of the councillor's absence from the local municipality, or his inability to act through sickness, infirmity or otherwise, during the period of three months consecutively, subject however to the provisions of article 119 ;

6. When the resignation of a councillor has been accepted by the council, or when his office has been declared vacant in virtue of article 208 ;

7. In the case of death ;

8. When a councillor has neglected to make and deposit within the required delay, the declaration mentioned in the last paragraph of article 283, subject nevertheless to the application of article 119, in case he should make and deposit his declaration before proceedings have been taken to get the vacancy filled. — R. S. Q., 6083.

Decisions. — 1. *Dubuc* vs *Fortin*, 11 R. L., 114.

2. The council of an incorporated town cannot declare vacant a councillor's seat without notice of proceedings. *Town of Lachute* vs *Burroughs*, 18 R. L. 1.

3. *Rouleau* vs *Corporation St. Lambert*, 10 Q. J. R ; S. C. 69 and 85. *Vide* art. 120.

4. The resignation of a councillor ought to be accepted by the council before being deemed complete and valid. If, however, four councillors resign simultaneously, and no quorum is possible, the lieutenant-governor-in-council may, under art. 338, replace them without the formality of acceptance and without waiting for the expiration of the delay of two months fixed by art. 118. *Thivierge* vs *Fortier*, 11 Q. J. R ; S. C. 373, 3 Rev. Jur. 244.

5. A councillor (mayor of the council) notifies the council that he is exempted from filling the offices of councillor and mayor and asks that he be replaced. *Ipso facto* these offices become vacant. Such councillor is not entitled to notice of meeting called to elect his successor. *Lemieux* vs *Bouchard*, 2 Rev. Jur. 381.

338. Notwithstanding any vacancy in the council, the councillors remaining in office continue to exercise their powers and fulfil their duties as such, if they form a quorum. If, on the contrary, they do not form a quorum, they cannot act as councillors until after such vacancy has been filled up.

339. At one of the sessions after the occurrence of such vacancy, the council appoints by resolution, from among the inhabitants of the municipality a person as councillor, who possesses the necessary qualifications to fill the vacancy.

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Decisions. — 1. A contestation as to the nomination of councillors should be in accordance with the provisions of art. 100. *Paris* vs *Couture*, 10 Q. L. R. 1.

2. An election of a councillor by general vote to replace an absent councillor is null if the seat has not first been declared vacant by the council. In any event the council alone has the right to fill such a vacancy. *Lizotte* vs *Lalancette*, 10 R. L. 480.

3. A resolution adopted at a special meeting of a municipal council, declaring a certain councillor's seat vacant for the reason that he has left the municipality and had absented himself from meetings of the council was declared null for the reasons that the members of council were not all present at said special meeting, that the notice of meeting did not mention the subject of the resolution passed, and was not served upon the councillor affected, and that it appeared, that the councillor still retained his domicile in the municipality. *Bourbonnais* vs *Filiatrault*, 4 Q. J. R ; S. C. 13.

340. If the council refuse or neglect to fill up a vacancy in the office of councillor within fifteen days after special notice of the occurrence of such vacancy has been lodged at the office of the council by any elector, such vacancy is then filled up by the lieutenant-governor, in conformity with the rules prescribed for the appointment of councillors when no election has taken place.

341. Whenever in consequence of any vacancies in the council, there are less than four councillors remaining in office, such vacancies can only be filled by the lieutenant-governor, in the usual manner.

Section II. — Vacancies in the Office of Mayor

342. The office of mayor becomes vacant in any of the following cases :

1. When the seat as councillor of such mayor becomes vacant ;

2. When the resignation of such mayor is accepted by the council, or when his office has been declared vacant under article 208 ;

3. In the case of refusal to accept, or to continue to fill the office of mayor, or that of county councillor ;

4. When a mayor has been appointed, who is exempt from the office, or when the person filling the office of mayor becomes exempt during his occupancy thereof, and who has, in either case, complied with article 213 ;

5. When the mayor, after his appointment, has by law become incapacitated for the office of mayor or county councillor, and has complied with article 207.

343. If the seven councillors remain in office, the election of the new mayor takes place at the first session of the council held after the occurrence of such vacancy, in conformity with article 330.

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If, on the contrary, there are vacancies in the office of councillor, such election takes place at the first session of the council held after all the vacancies in the office of councillor have been filled up.

344. If the appointment of a new mayor is not made at the time fixed by the foregoing article, it can be made by the lieutenant-governor in conformity with the ordinary rules.

345. The council may, at any time, appoint a pro-mayor who, in the absence of the mayor or when the office is vacant, discharges the duties of the mayoralty, with all the privileges, rights and obligations thereunto attached.

CHAPTER SEVENTH

CONTESTED APPOINTMENTS OF MEMBERS OF THE LOCAL COUNCIL

346. Any appointment of councillor made by the electors may be contested by any candidate or by five municipal electors, on the ground of violence, corruption, fraud or incapacity, or on the ground of the non-observance of the necessary formalities.

Decisions. — 1. Vide *Marier* vs *Rasconi*. 7 R. L. 140, cited under art. 313.

2. The election or nomination of a councillor ought to be contested directly and cannot be determined incidentally upon the contestation of a resolution of council concurred in by the councillor.

The jurisdiction given to the Circuit Court or the Magistrates Court by art. 348 is exclusive.

Paris vs *Couture*, 10 Q. L. R. 1.
Fiset vs *Fournier*, 3 Q. L. R. 334.
Delage vs *Germain*, 12 Q. L. R. 149.

3. Payment of voters' taxes by a candidate or his agents is a corrupt act. *Dostaler* vs *Couture*, 11 R. L. 109.
Auclair vs *Poirier*, 28 L. C. J. 231.

4. Not only should corrupt votes be struck off, but if there is proof of general corruption on the part of the successful candidate's canvassers and committee the election should be annulled. *Parent* vs *Patry*, 12 L. N.. 370.

5. The election of a councillor may be contested to final judgment notwithstanding the resignation of such councillor, the declaring of his seat vacant by the council and the nomination of another councillor by the lieutenant-governor in council. *Vinet* vs *Fletcher*, 18 R. L. 672.

6. Absence of qualification may be invoked by exception as to form. *Poudrier* vs *Bonin dit Dufresne*, 5 M. L. R. 56.

And not by general denial. *Desjardins* vs *Tweedie*, 7 Q. J. R ; S. C. 74.

7. The payment of money to an elector for his loss of time in voting, expenses, etc., constitutes a corrupt act. Not so a promise or a gift made for a vote to one who has no right to vote. *Venner* vs *Archer*, 1 Q. L. R. 283.

8. A new election will be ordered if acts of corruption are proved

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by petitioner who claims the seat, even although he is shown to have had the majority of votes. *Auclair* vs *Poirier*, 28 L. C. J. 231.

9. The mistakes or faults of official do not invalidate the election unless in virtue of an express provision of law. *Bureau* vs *Normand*, 5 R. L. 40.

10. The plea of a councillor that his opponent was not qualified according to law will be rejected. Recriminatory proof is admissible. *Surprenant* vs *Tremblay*, 11 L. N. 137.

11. Art. 346 does not apply to the case of the nomination of a councillor by the council. In such case the proper procedure is by means of *Quo Warranto*. *Bissonnette* vs *Nadeau*, 1 Q. J. R ; S. C. 34.

12. The recourse given by art. 100 is not exclusive of that provided by art. 1016 of the Code of Civil Procedure. *Bourbonnais* vs *Filiatrault*, 4 Q. J. R ; S. C. 13.

13. A contestation of an election based upon the elected councillor's insolvency may be made by means of *Quo Warranto* notwithstanding arts. 4275 *et seq.* of the Revised Statutes. *Riendeau* vs *Dudevoir*, 12 Q. J. R ; S. C. 273.

14. Loans of money to voters by a candidate to enable them to pay their taxes are corrupt acts sufficient to annul an election.

If a voter's name appears on the valuation roll as holding land of sufficient value, the fact will be conclusive of his right to vote. A deaf-mute may vote by signs. *Balthazard* vs *Brodeur*, 3 Rev. de Jur. 474.

15. If one of five electors contesting an election should die pending the suit, he cannot be replaced, nor can his heirs or successors take up the instance. *Leduc* vs *Bock*, 3 Rev. de Jur. 104.

16. *Nault* vs *Beaudet*, 3 Rev. de Jur. 113.

17. The service of a petition in contestation of an election is null if the bailiff who makes it is interested.

The petitioner must establish his quality if it is denied *e. g.* by preliminary exception. *Côté* vs *Levine*, 7 Rev. de Jur. 279. *Vide* also p. 465.

18. That while the statute prescribes certain qualifications for a candidate aspiring to municipal office, such candidate is not an officer and his position as such cannot be attacked by *quo warranto*. *Hickey* vs *Tansey* and *Kinsella*, 6 Rev. de Jur. 446.

19. A municipal councillor must be qualified as an elector when elected otherwise his election may be set aside on this ground, but it is not essential that he retain this qualification during the whole term of his office, if he is eligible in other respects.

An election may be declared null by means of the writ *Quo Warranto* even after the usual delays for contestation, by invoking an incapacity which, if it did not exist at the time of the issue of the writ, existed at the time of the election. *Allard* vs *Charlebois*, (*Taschereau J. dissenting*), 14 Q. O. R., (Rev.) 310.

20. A municipal councillor who, during his term of office, sells the immoveable upon which he qualifies, with right of redemption, may be dispossessed of his seat by writ *Quo Warranto*. *Berthiaume* vs *Pilon*, 14 Q. O. R. 524.

347. The appointment of the mayor may also be contested on the same ground by any member of the council.

348. The examination and decision of such contestation is vested

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in the circuit court of the district or county, or in the magistrate's court of the county in which the municipality is situated, to the exclusion of all other courts.

Decisions. — 1. The Superior Court has not jurisdiction in actions based upon art. 346. *Lajeunesse* vs *Nadeau*, 10 Q. J. R ; S. C. 61.

2. This exclusive jurisdiction relates only to nominations and elections made by electors and not to nominations made by the council. *Boissonnault* vs *Couture*, 11 Q. J. R., S. C. 523.

3. Proceedings to prevent a councillor to sit based upon his disqualification should be by means of *Quo Warranto*. *Dulude* vs *Huneau*, 3 Rev. de Jur. 220.

4. A councillor who becomes indebted to a municipal corporation for taxes does not thereby become disqualified.

Such an allegation should, to be effective, be made regarding a councillor at the time of his election. *Yale* vs *Bayard*, 3 Rev. de Jur. 355.

349. Such contestation is brought before the court by a petition in which are set forth the facts and reasons alleged in support of the contestation.

The petitioners may also in their petition indicate the persons who have a right to the office in question, and state the facts necessary to establish such right.

Decisions. — 1. The election of six municipal councillors elected at the same time may be contested by one petition, even although the grounds of contestation differ as regards each of them ; one security for costs will suffice. The payment of all municipal and school taxes due at the date of the election is an essential part of an elector's qualification. *Lawford* vs *Robertson*, 16 L. C. J. 173.

2. As many petitions to annul as there are councillors whose election is contested may be produced. *Tremblay* vs *Roy*, Q. R. C. p. 35.

3. Irregularities of a meeting of electors must be specified. *Marquis* vs *Couillard*, 10 Q. L. R. 98.

4. *Fraser* vs *Buteau*, 10 L. C. R. 289 ; *Crébassa* vs *Péloquin*, 1 L. C. R. 247 ; *Lacasse* vs *Labonté*, 10 Q. O. R., S. C. 97.

350. A copy of the petition, with a notice stating the day on which the petition will be presented to the court, is served upon and left with every councillor whose appointment is contested, within thirty days from the date of such appointment; otherwise the right of contesting is forfeited.

Decisions. — 1. A bailiff finding the doors of defendant's domicile locked, and having reason to believe that defendant was in hiding, may be authorized by a judge to signify a petition by nailing a copy thereof to the door and informing his nearest neighbour thereof. *Racine* vs *Renaud*, 7 Q. O. R., S. C. 389.

2. Although the delays for contesting a municipal election may have expired under this article, yet recourse may be had by writ *Quo Warranto* (987 C. P. C.) against any councillor who illegally exercises office in default of the qualification required by art. 283 of the Municipal Code. The fact that the qualification of the councillor was the same at the

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time of his election is not a valid answer. *Sigouin* vs *Viau*, 5 Rev. de Jur. 410. (Court of Rev.)

351. No such petition can be presented or received after the close of the first term of the court next following the day when each contested appointment was made.

Nevertheless, if the appointment was made within the fifteen days preceding such first term, the petition may be presented on the first day of the second term.

Decisions. — 1. If more than fifteen days have elapsed between the contested nomination and the close of the term which follows that nomination, the petition must be presented during that term, even if it has commenced during the fifteen days which follow the nomination, and a petition presented during the following term will be dismissed. *Lavoie* and *Hamelin*, 5 L. N. 94.

2. Since the Statute of 1883, 46 Vic., ch. 26, s. s. 1 and 2, a petition contesting a municipal election that had taken place the 12th of January 1885 and which had been served the 11th of February, may be received on the 17th February. *Brunelle* and *Brosseau*, 8 L. N. 99.

3. When the election of the municipal councillors takes place during the fifteen days preceding the first day of the first term which follows the election, the petition can be presented the first day of the second term. C. C. St. Hyacinthe, 3rd April 1872, *Sicotte J.*; *Bourgeault, et al.* petitioners and *Dalpé et al* councillors, respondents, 16 L. C. J. 255.

4. The provisions of art. 351 are not in contradiction with the section 6084 of the R. S. Q. This last law is but an addition to the condition contained in the provisions of said art. 351. *Fortier* and *Blouin*, 3 Rev. de Jur. 215 C. C. Andrews, J.

5. The petition will not be dismissed if presented before the expiration of the ten days from the security given, but the court will permit the production of this petition, and receive it after the delay of ten days. In Montreal where all the judicial days are days of term for the Circuit Court from the 15th of January, a petition contesting a nomination which took place on the 12th of January may be presented during the thirty days after nomination. *Bourassa* and *Aubry*, 14 R. L. 415.

352. The petitioners must give security for the costs at least ten days before the petition is presented to the court; otherwise such petition cannot be received by it.

Decisions. — 1. The intervening parties in a contestation of an election are not obliged to give the security that the petitioners are bound to give. *Brousseau* and *Brouillet*, 2 R. C. p. 234.

2. It is not necessary to give the description of any immoveable in the security of a single person, and in case of irregularity, the court will grant the production of a new bond, C. C. Montreal 26th February 1872. *MacKay J. TremBlay* and *Roy*, 2 R. C. p. 235.

3. The bail bond need not contain the description of the properties of the persons who give security, but their declaration given under oath, that they are owners of immoveables of the value required is sufficient. C. C. St. Hyacinthe, 3rd April 1872. *Sicotte J.*, *Bourgeault et al.*, Petitioners, and *Delpé et al.*, councillors, Respondents. 16 L. C. J., p. 255; 4 R. L., p. 74.

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4. In the case of a contestation of a municipal election, security given under article 352, M. C. which states that the person giving security is owner of properties of a total value of four hundred dollars, all debts paid, is not sufficient, as article 353 requires that the person giving security should be owner of properties of the value of two hundred dollars, above all other charges. *Hébert* and *Fréchette*, 14 R. L. 213.

5. In matters of contestation of municipal elections, the Court is disposed to grant permission to amend the procedure and even to amend the security, provided that the amendments are not new proceedings nor asked after the legal delays; and the security required in such case must clearly form part of the proceedings in question. *Desmarteau* and *Daigneault*, 2 O. R; S. C. 155.

6. Irregularities as to the security are not sufficient to have the contestation of a municipal election dismissed; the fyling of a new security may be granted by the court. *Desjardins* and *Tweedie*, O. R. S. C. 74.

353. The security required by the foregoing article is put in before the clerk of the court.

The sureties must be owners of real estate to the value of two hundred dollars, over and above any incumbrances there may be on such property. One surety suffices, provided he is an owner of real estate to the required value.

354. Such petition is presented in open court, together with the returns of the preliminary services.

355. If the court, after having heard the parties, is of opinion that the grounds set forth in the petition are sufficient in law to have the appointments declared null, it orders proof to be adduced and the parties interested to be heard, on the day of term it deems the most convenient.

Decisions. — 1. Upon contestation of a municipal election, it is for the petitioner to prove his qualification. *Hamilton* and *Brunet*, 9 O. R.; S. C. 1.

2. The Defendant who has an exception to the form to invoke must fyle it when the petition is presented; it cannot be done without the permission of the court after the tribunal has expressed the opinion that the particulars mentioned in the petition are well founded in law to have the election declared null and void, and has ordered proof to be made. *Racine* and *Renaud*, 7 O. R; S. C. 393. Mathieu, J.

356. The court proceeds in a summary manner to hear and decide such contestation.

The evidence may be taken orally or in writing, in whole or in part, as the court shall order.

357. The court by its judgments may confirm or annul the appointment, or declare another person to have been duly elected.

Decisions. — 1. An examination of illegal votes may be had for two candidates, when there are allegations on both sides of illegal votes cast. *Auclair* vs *Poirier*, 28 L. C. J. 231.

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2. A municipal councillor whose election is contested on the ground of corrupt practices cannot urge by a plea that he would still have a majority of votes even if the votes alleged to have been irregularly cast for him were put aside and likewise a certain number of indicated illegal votes given in favour of the defeated candidate. *Bourassa* vs *Aubry*, 14 R. L. 114.

3. An examination of the votes and recriminatory proof will be allowed even if the seat is not claimed by the defeated candidate. *Dostaler* vs *Coutu*, 11 R. L., 109; *Lawford et al.* vs *Robertson et al.*, 16 L. C. J., 173.

4. There can be no review of a judgment rendered by the Superior Court on a *Quo Warranto* concerning a municipal office. *Fiset* vs *Fournier*, 3 Q. L. R., 334.

5. In proceedings *Quo Warranto* unless the defendant shows a perfect title thereto, he will be deemed to have usurped the office which he holds. *Burroughs* vs *Barron*, 20 L. C. J. 80.

6. A final judgment of the Superior Court on a petition in contestation of a municipal election is not susceptible of review before three judges. *Beauchemin alias Petit* vs *Hus*, 1 M. L. R; 413 S. C.

7. The roll of monthly school fees will be admitted as sufficiently establishing the imposition of such taxes and default to pay the same when no contestation is raised as to the validity of the imposition. Monthly school fees are school taxes and payment by another party of taxes due by a rate-payer is a corrupt act. *Auclair* vs *Poirier*, 28 L. C. J. 231.

358. The court may condemn either of the parties to pay the costs of the contestation; and such costs are taxed and are recoverable against all parties to the suit and their sureties.

The judgment of the court, in so far as regards the costs, is executory against the sureties, fifteen days after a copy thereof has been served upon them.

359. The court may order that its judgment be served at the expense of the party against whom the judgment has been given, upon the warden or upon the registrar, and on any person it may deem proper.

360. If the trial of the contestation is not concluded at the close of the term of the court to which the petition was presented, the sitting judge must continue it without interruption during the vacation, adjourning from day to day until he delivers his final judgment upon the merits of the contestation.

361. If the judgment annuls the election of the local councillors or any one of them, without stating who should fill such offices, the court must in the same judgment order a new election to replace the councillors whose appointments are so annulled, name for that object a person to preside at such election, and fix the day and hour upon which a meeting of the municipal electors is to be held.

Such day must not be sooner than fifteen nor later than twenty days from the date of the judgment.

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362. Such election must be announced by public notice, by the mayor in office, or by the secretary-treasurer, if there be no mayor in office, or if the mayor is the councillor whose appointment has been annulled.

If there be neither a mayor nor a secretary-treasurer in office, the notice is given by the warden of the county, as soon as a copy of the judgment has been served upon him.

The omission to give this notice prevents a meeting of the municipal electors from being held, and renders the persons whose duty it is to give it, subject to the penalty imposed by article 295.

363. In default of the person appointed by the court, the election is presided over by the secretary-treasurer, and in default of that officer, by the senior justice of the peace of the district present at the meeting.

In other respects, the election is held and conducted in conformity with the rules and formalities prescribed in the third chapter of this title, and the councillors elected at such election are invested with the same rights, and are subject to the same obligations and penalties as councillors appointed at general elections, and only remain in office for the time for which the persons whose elections have been set aside were appointed.

364. If the judgment of the court declares the appointment of the head of the council null and void without naming a person to replace him, the council must proceed to elect a new head within thirty days from the date of the judgment.

In default of such election, the head of the council may be appointed by the lieutenant-governor in the usual manner.

CHAPTER EIGHTH

OF THE OFFICERS OF THE LOCAL COUNCIL

General Provisions

365. In addition to the municipal officers which it is required to appoint in virtue of the other provisions of this code, every local council must appoint, in the month of March, of every second year :

1. Three valuators ;
2. A road inspector for every road division in the municipality ;
3. A rural inspector for every rural division in the municipality ;

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4. As many public pound-keepers as it deems necessary.

The council may, by resolution, also appoint a chief road inspector for the whole municipality, and pay him as one of its officers. The person so appointed shall have the absolute control and direction of all the other road inspectors of the municipality; and all the work of a specially permanent character, ordered by the council to be done on any road, shall be done under the personal supervision of that officer.

The council may likewise appoint the same person inspector of bridges for the whole municipality. — 63 Vic., chap. 45.

Decision. — A judge ought not to alter the valuation of an immoveable made under oath by the valuators of a municipality unless it has based upon an orroneous principle, or unless it is so obviously wrong that a competent and honest man could not possibly arrive at the same conclusion. *Bagg* vs *Village of St. Louis*, 20 Q. O. R., 149. S. C., Langelier, J.

366. The valuators enter upon their duties so soon as they have made oath well and faithfully to discharge the duties of their office.

Rural inspectors and pound-keepers enter upon the discharge of their duties immediately after service of the notice of their appointment.

Road inspectors remain in office up to the first of May, and those who succeed them enter into office on that day. — R. S. Q., 6086.

Decisions. — 1. The Council of the Township of Stoke named three valuators; but one of them being absent and unable to act, the mayor took upon himself to name a third, who, with the other two, made the valuation roll; and on the day upon which the roll was homologated, the Council ratified the mayor's nomination. It was held that such nomination was null, and invalidated the valuation roll. *Rolfe* vs *the Corporation of the Township of Stoke*, 24 L. C. J., 2 and 3.

2. When the qualification of an inspector is denied, it can only be proved by the production of an extract from the municipal registers, establishing that his nomination was legally made; verbal proof that he was recognized and that he acted as such is insufficient. *Lemire* vs *Courchène*, 1 R. L. 158.

367. Justices of the peace are exempt from serving as road inspectors, rural inspectors, or pound-keepers.

367*a*. Every person appointed to any of the offices mentioned in article 365 of this code, who unlawfully refuses either to accept the same, or to discharge the duties thereof, incurs a penalty not exceeding twenty dollars. — R. S. Q., 6087.

Section I. — Provisions Specially Applicable to the Secretary-Treasurer of the Local Council

368. The secretary-treasurer of the local council must keep "a register of roads and water-courses", in which are entered at full length, in the order of their dates, and certified to be correct by him,

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all *procès-verbaux*, acts of apportionment and by-laws in force respecting work to be done on the roads, bridges and water-courses to be built and kept in repair in the municipality, under the control of the local council.

369. He must note on the margin of every document so registered any amendments which are subsequently made to such document, or its repeal in the event of its being repealed.

370. The secretary-treasurer must perform whatever it is his duty to perform under the provisions of the law respecting the jurors' list and the list of parliamentary electors.

371. The secretary-treasurer must prepare in the course of the month of November, in each year, a statement showing, in as many separate columns :

1. The names and qualities of all persons indebted towards the corporation or its officers for municipal taxes, as set forth in the valuation roll, if they are entered therein ;

2. The amount of all municipal taxes remaining due to the corporation by each of such persons or by persons unknown ;

3. The amount of municipal taxes due by each of such persons to the officers of the council ;

4. The amount of school taxes due by each of such persons to the period of the drawing up of such statement, if a statement of such arrears has been lodged in time in the office of the council by the secretary-treasurer of the school commissioners or trustees ;

5. The expenses of collection due by such persons ;

6. The description of all real estate liable for the payment of the taxes mentioned in such statement ;

7. The total amount of taxes and costs affecting such real estate for municipal or school purposes ;

8. The reasons for which such sums were not collected ;

9. All other information required by the council and all remarks connected therewith.

Decision. — Failure to observe the provisions laid down in arts. 371 to 373 renders null a sale by the County Council, *Gifford* vs *Germain*, 1 Rev. Jur., 234. S. C.

372. Such statement must be submitted to the council and approved of by it.

373. The secretary-treasurer, if he receives an order to that effect from the council, must, before the twentieth day of December of each year, transmit to the office of the county council an extract from such statement as approved by the council, containing :

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1. The names and qualities of all persons indebted for municipal or school taxes, imposed on the real estate possessed or occupied by such persons ;

2. The description of all lands liable for the payment of municipal or school taxes ;

3. The sum total of the taxes affecting such lands for municipal or school purposes. — R. S. Q., 6088.

Section II. — Of Valuators

374. No person can be a valuator unless he possesses as proprietor, either in his own name or in that of his wife, real estate to the value of four hundred dollars, according to the valuation roll, if there is one.

Decisions. — 1. A person who is only a usufructuary cannot act as a valuator, but this fact alone will not suffice under article 188, to invalidate a valuation roll. *Senécal* vs *Corporation of the Parish of l'Ile Bizard*, 17 Q. O. R. ; 268 C. C.

2 .*Vide* under article 916.

375. Valuators, in the execution of their duty, may demand the services either of the secretary-treasurer or of any other clerk.

The secretary-treasurer, or clerk, whose services have been so required, is entitled, for every day during which he is employed, to a sum not exceeding two dollars, payable by the corporation, on certificate from the valuators who employed him.

Decisions. — 1. Lack of qualification on the part of valuators does not give the right to an action of damages on the part of a rate-payer whose goods have been seized for school assessments based upon a roll of valuation. *Barrette* vs *The School Commissioners for the Parish of St. Columban*, 7 R. L. 185.

2. A valuation roll is annulled, if the valuators do not possess the qualification required by-law, or if they have not taken the oath required, or if they have not signed the roll. *Patton* vs *The Corporation of St. André d'Acton*, 13 L. C. J. 12.

Section III. — Of Road Inspectors

376. The road inspector is bound to superintend all work ordered to be done in the constructing, improving or keeping in repair of local or county municipal roads, sidewalks and bridges, situated within the limits of his division, and to take care that such work be performed in conformity with the provisions of the law, *procès-verbaux*, or by-laws which govern it, unless he be exempted therefrom by an order of the council or of the board of delegates under whose direction such work is being done, or unless a special officer has been appointed to superintend such work.

If any county municipal road is situated partly in one division and

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partly in another, it is under the joint and several superintendence of the inspectors of the two divisions. — 57 Vic., ch. 51, s. 2.

Decision. — **A road inspector has not the right to decide that a work shall be done in a manner different from that indicated in the *procès-verbal*. *Tremblay* vs *Leblanc*, 11 L. N. 162.**

377. Ferries are also under the superintendence of the inspector of the road division, within the limits of which they are situated, unless they have been placed by the council under the superintendence of another officer.

378. Every road inspector appointed for a division has jurisdiction over every person liable to perform the works under his superintendence, whether such person is domiciled within or without the limits of his division.

379. Whenever the inspector of a road district is, for any reason whatever, temporarily incapable of acting, the local council may appoint some person to replace him during such incapacity; in default of which the mayor must, during the continuance of such incapacity, place the division under the jurisdiction of another road inspector of the municipality, by a written order served on such inspector.

Such inspector is not thereby released from the superintendence of the division for which he had been in the first instance appointed.

380. The road inspector, in so far as regards his relations to the county works, whereof he has the superintendence, is an officer of the county council.

380*a*. Whenever a road inspector is personally interested in any work or other matter within his jurisdiction, and neglects or refuses to execute or supply that which he is bound to execute or supply, as interested in such work or matter, the secretary-treasurer of the local municipality wherein such inspector has jurisdiction possesses in relation to such inspector the same rights, powers and obligations as the inspector himself, in relation to all persons interested in the same work or matter.

In respect of work to be performed in common, the inspector so interested is always *in morâ* to fulfil the obligations attaching to such works. — R. S. Q., 6089.

381. Every road inspector who refuses or neglects, without reasonable cause, to perform any duty which is imposed upon him by the provisions of this code or of municipal by-laws, or which is required of him in virtue of such provisions, or to obey the orders of the local or county council, in respect of the works which are under his superintendence, incurs, in addition to damages caused for neglect

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or refusal, a penalty of not less than one or more than twelve dollars, except in cases otherwise provided for.

Decision. — In an action to recover a fine against a road inspector, it is necessary to allege the particular negligence of which the defendant was guilty, and what legal requirements he refused to fulfil. *Corporation of Champlain* vs *Levasseur*, 33 L. C. J. 298.

382. Whenever any work must be performed in common upon any municipal roads or bridges, it is the duty of the road inspector of the division to notify the persons who are liable to perform such work by special notice, either by special verbal or written notice, or by public notice of three days :

1. Of the time and place where such work must be performed ;

2. Of the quantity and description of materials which are required, and of the time and place where they must be provided ;

3. Of the amount of labour which each must contribute ;

4. Of the description of tools and implements required, which must be of the kind ordinarily used by farmers in the municipality.

If the work to be performed in common is, however, not sufficient in the opinion of the council, to justify the making of a call upon the rate payers interested, the road inspector may cause such work to be performed and the cost thereof to be paid in equal proportions by the rate payers interested in such work, as well as the costs of the collection, which are taxed by the council.—R. S. Q., 6090.

383. If the nature of the work demands it, he may require each of such persons to bring or to cause to be brought a certain number of horses or oxen, with proper harness, carts or ploughs, if he have them.

Every day's labor of a horse or yoke of oxen, with harness, carts or ploughs, is credited to the person who brought the same, as one day's work.

384. It is the duty of the road inspector :

1. To direct and superintend the execution of all such work ;

2. To fix the hour of commencing and leaving of such labor, and the time for rest and meals, so that the day may consist of ten clear hours of labor on the spot where the work is to be done ;

3. To dismiss any person who is idle, who hinders the others from working, or who refuses to obey his orders.

He may at once fill up the place of any person who has not attented at the hour appointed for labor, or who has been dismissed, at the costs of the person so in default ; such costs may be recovered by the substitute or by the inspector, in the manner prescribed for the recovery of penalties imposed by this code.

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385. The road inspector must, on resolution of the local council to that effect, procure and keep under his charge, a snow plough, a roller, an iron or steel shod scraper, or other implements to be used on the municipal road in his division.

Every person who is bound to perform work on municipal roads may be compelled by the road inspector of the division to make use of such implements as part of the road work he is bound to perform.

The use of such implements is gratuitous, and the outlay incurred for their purchase and repair falls upon the local corporation.

386. The inspector of roads must, forthwith, or at the expiration of the delay granted in cases which come under the provisions of article 389, cause the removal or suppression of all obstructions and nuisances from the municipal roads, sidewalks, ferries and bridges, within the limits of his jurisdiction, by the persons who have occasioned them, or in the event of their refusal or neglect, by any other person whom he authorizes so to do, at the costs of the person in default.

Such costs are recovered in the same manner as penalties imposed by the provisions of this code, and the local corporation is answerable therefor, if the person in default is without means.

If the person who occasioned such obstruction or nuisances is unknown, they must be removed at the expense of the local municipality.

387. The following are deemed obstructions or nuisances :

1. Filth, dead animals, or other objects placed or left on any municipal road or bridge, or in any water-course or ditch connected with such road or bridge ;

2. Any trench opening made in any municipal road ;

3. The anchoring or mooring of any vessel, boat or other floating object, at the landing place of any ferry, so as to impede free approach to the beach or to a quay.

388. Whoever has committed any act which may have the effect of obstructing, impeding or rendering inconvenient the free passage of vehicles or foot passengers over any part of a municipal road, sidewalk or bridge, or of impeding the free course of water, in connection with such work, is deemed to have occasioned an obstruction or nuisance, within the meaning of the two preceding articles.

389. Whenever such obstruction arises in the course of some work duly authorized by law, by the council, or by the road inspector under the provisions of any by-law or resolution passed in virtue of article 476, the same is not deemed an obstruction within the meaning of those articles.

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390. Whenever any such duly authorized work is in course of execution on any municipal road, side-walk or bridge, excavations and other dangerous places must be pointed out, both by day and night, in such a manner as to prevent accident, under a penalty not exceeding twenty dollars for each day during which the provisions of this article are contravened, in addition to any damages occasioned thereby.

391. Whoever causes any obstruction or nuisance on any municipal road, side-walk, ferry or bridge, or renders the use thereof difficult or dangerous, incurs for each offence, over and above the damages occasioned thereby, a penalty of not less than two or more than ten dollars.

392. The road inspector of the division must make a report to the council respecting any encroachments on the road, side-walks, bridges, and other municipal public works which are under his superintendence.

393. Every road inspector, and every person who accompanies him or who is authorized by him in writing may, in the day-time, without previous notice, enter upon any land whatever, whether occupied or unoccupied, inclosed or uninclosed, for the purpose of making a survey for any road, or upon any unoccupied land, for the purpose of searching for timber, stone or materials necessary to carry on any public work, by making compensation for actual damage done.

394. Every road inspector entrusted with the superintendence or direction of labor on any road, bridge, or other public work may, by himself or by others acting under his direction, and without previous notice, enter in the day-time, to the distance of one arpent from such public work upon any unoccupied land, and take therefrom any materials requisite for such work, except fruit-trees, maples, planes, and any other trees preserved for ornament.

395. Such inspector must, as soon as possible, declare on oath what he believes to be the value of the damage occasioned by the taking of such materials.

If the amount of damage exceeds twenty dollars, it must be assessed by the valuators of the municipality, according to the rules laid down in article 902 and the following articles of the title of expropriation for municipal purposes.

396. The amount of damages is paid by such road inspector, out of the moneys placed in his hands for defraying the cost of such works, to the person who has suffered the damage, all municipal taxes, fines or costs due by such person to the corporation or its officers being previously deducted therefrom. In default of such

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moneys, it is payable by the corporation, saving its recourse against the persons bound to perform such works.

397. The road inspector may, without being authorized by the council, perform or caused to be performed the works required on any municipal front road, by-road, side-walk, or bridge, within the limits of his jurisdiction, which have not been performed in the manner or at the time prescribed by the persons bound to perform such works.

He may also furnish or cause to be furnished, the materials which should have been furnished for such public works, and which have not been so furnished in the manner or at the time prescribed.

Nevertheless, the cost of the work performed and the materials furnished in virtue of this article must not exceed five dollars each year for each piece of land liable for such work, unless the road inspector has previously served on the persons liable for such municipal works a special notice, either verbal or written, enjoining them to perform such work or to furnish the materials required, within a delay of four days, the whole without prejudice to penalties or damages incurred by such persons, by reason of their default to execute such work or to furnish such materials in the manner and within the delay prescribed by the *procès-verbaux*, by the by-laws or by law.

In every case, the road inspector who has performed work, or caused the same to be performed, or furnished materials, or caused the same to be furnished, under this article, must, as soon as possible, inform the persons in default thereof, by a special notice, containing a statement of the amount due for such works or materials.

398. The value of such works or materials, with twenty per cent in addition thereto, may be recovered by the inspector of roads, as a debt due to himself, together with costs against any person bound to perform such works or furnish such materials, in the manner prescribed for the recovery of penalties imposed by the provisions of this code.

Decisions.—1. In an action instituted by the Mayor of a municipality, under arts. 398 and 1042, of the Municipal Code, for the value of labor which a rate-payer had neglected to perform, a justice of the peace, residing in another municipality has no jurisdiction, unless it appears from the record that there was no justice of the peace in the municipality where the Defendant resides, unless it is shown by the production of the by-law, or the testimony of the inspector that the rate-payer in question was bound to the performance of the labor; and unless it also appears that the indebtedness for the accomplishment of this labor was incurred in a parish where the justice of the peace charged with the case resides. *Lambert* vs *Lapalisse*. 6 Rev. Leg., 65.

2. The Superior Court has jurisdiction in an action for the recovery of a sum exceeding $200.00, for labor done for a municipal corporation upon its roads, notwithstanding provisions of arts. 398, 401, 951, and 1042. *Ross* vs *The Corporation of the Parish of Ste. Clotilde de Horton*, 11 R. L. 520.

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399. If the road inspector does not comply with the provisions of article 397, when the labor or materials required on any municipal works, in his division, have not been performed or furnished in the manner and at the time prescribed, he must report thereon to the council.

400. The council, on such report, authorizes the road inspector to cause the work to be done or the required materials to be furnished at the cost of the corporation, by some person selected either by it or by the inspector.

401. The cost of such works or materials is paid on the order of the road inspector, by the secretary-treasurer of the council, and is recovered by the corporation from the persons in default, with twenty per cent over and above the amount thereof, and costs, in the manner prescribed for the recovery of penalties imposed by this code.

Decisions. — 1. An action for municipal taxes and the value of road labor for more than $100.00 ought to be taken in the Superior Court. Arts. 1053 and 1054, C. P. C., only apply to school taxes, and assessments for the construction of churches. *The Corporation of North Ireland* vs *Mitchell*, 13 Q. L. R. ; 32, 16 R. L. 534. *Ross* vs *Corporation de Ste-Clotilde de Horton*, 11 R. L. 520.

2. In an action under art. 401, if the Defendant pleads the absence of any *procès-verbal* or assessment authorizing the collection of taxes upon his immoveables, the Corporation Plaintiff ought not only to produce the *procès-verbal*, but ought to make proof of the notices required by law, in connection therewith. *Corporation of the Townships of Wendover and Simpson* vs *Tourville*, 5 R. L. 47.

3. The road inspector may institute proceedings in his own name, for the recovery of the cost of labor done by him, upon roads, in virtue of arts. 397 and 398. The corporation cannot take this action in the name of the inspector, but only in its own name. *Garant* vs *Proulx*, 2 Rev. Jurisp. 168.

402. The amount of any judgment rendered in favor of the road inspector or of the corporation, on any action brought to recover the value of the works performed or the materials furnished by either the road inspector or the corporation, and the twenty per cent in addition thereto, together with interest and costs, is assimilated to municipal taxes.

403. In every action brought, either by the road inspector or by the corporation, to recover the value of such works or materials, the evidence of the road inspector is sufficient proof, if it is not contradicted by a witness worthy of belief, in the case where he establishes :

1. That the required formalities have been observed ;

2. That the works have been executed, and the materials furnished ;

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3 That the amount claimed is the real value of such works or materials ;

4. That the defendant is a person legally liable for the same.

404. The road inspector must, between the first and fifteenth days of June and October, in each year, and moreover whenever he is required by the council or mayor :

1. Go over and inspect the municipal ferries, roads, side-walks and bridges in his division ;

2. Mark down the state in which he finds such ferries, roads, side-walks and bridges, and the works in connection therewith ;

3. Make note of any person who has neglected to fulfil his obligations, and prosecute him in the name of the corporation ;

4. Make a report in writing containing the substance of the notes he has taken and the information he has obtained since his last report, on every public work under his superintendence, and further stating the arrears of labor unperformed or of material unfurnished, the value in money of such labor or materials, and the penalties and costs remaining unpaid, specifying the lands in respect of which the same are due, and the owners, or occupants of such lands, if known.

405. When a municipal bridge or one forming part of a municipal road, or a bridge over a water-course is destroyed or broken, or whenever the use thereof becomes dangerous, or whenever the use of a municipal road becomes difficult or dangerous, the mayor of the local municipality in which such bridge or road is situated, either in whole or in part, whether such work is a local or a county work, may, in case of urgent necessity, authorize the road inspector or any other person to reconstruct or repair the same, or to make a safe temporary bridge or crossing, without delay, at the expense of the local corporation.

The cost of such work is recoverable by the local corporation, from the persons or corporation who are liable therefor in virtue of the law, by-law or *procès-verbaux*, in the manner laid down for the recovery of penalties imposed by this code ; and the amount of the judgment with interest and cost is assimilated to municipal taxes. — R. S. Q., 6091.

Decisions. — 1. The obligation imposed by a *procès-verbal* upon rate-payers, to maintain a wooden bridge does not imply that of paying for the reconstruction of an iron bridge carried off by a flood, and involving a sum of money seven times the cost of the former bridge. If the quashing of a *procès-verbal* can only result in the rate-payer being obliged to pay a greater tax, he is without interest to ask for such annulment, and his action should be dismissed. Unless the result will be to remedy an actual injustice, the Court will not annul a *procès-verbal*, after the expiration of the delays allowed by law for that purpose. *Perrault* vs *Corporation of St. Alban*, 7 Q. S. R. S. C.

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2. Where a wooden bridge threatens to collapse, a council may pass a resolution for its reconstruction in iron, by causing a *procès-verbal* to be duly made. Pending the collection of the cost of construction of a new bridge, in accordance with the provisions of the *procès-verbal*, the Council may, by a simple resolution, borrow the necessary funds for the payment of the cost of such reconstruction. During the construction of the bridge, the Council may pass a by-law for the collection of the costs of reconstruction, assessing them in the manner indicated by the *procès-verbal*, i. e. one-half, on the two front ranges of the parish, and the other half on the other two back ranges. *Breton* vs *Corporation St. Michel*, 4 Q. J. R., Q. B., 484.

Section IV. — Of Rural Inspectors

406. Rural inspectors are bound to do whatever is required of them in virtue of the provisions of this code, respecting public nuisances, clearances, boundary ditches or boundary fences.

They are bound to superintend all works of construction, improvement or repair ordered upon local or county municipal water-courses, situated within the limits of their divisions, and to take care that such works be performed according to the provisions of the law, *procès-verbaux* or by-laws which govern them, unless they are exempted from so doing by an order of the council or of the board of delegates under whose direction such works are being executed, or unless a special officer entrusted with the superintendence of such works has been appointed.

They are also bound, within the limits of the division for which they have been appointed, to perform all the other duties which are imposed upon them by the provisions of this code or by municipal by-laws.

As regards the line fence and ditch to be made and maintained between two contiguous properties, but which, by the division line between two municipalities, are situated one in one municipality and the other in another, — whether such municipalities be or be not situated in the same county, — the rural inspectors of both municipalities have concurrent jurisdiction.

The foregoing provision applies, whatever may be the adjoining municipalities, parishes, villages, towns, etc., and even if they are not of the same kind.

407. The rules laid down in articles 378, 379, 380, 380*a*, and 381, regarding road inspectors, apply also *mutatis mutandis* to rural inspectors.

Articles 382, 383 and 384 are also applicable to such officers, when joint labor must be done on water-courses. — R. S. Q., 6092.

408. The provisions of articles 397, 398, 399, 400, 401, 402 and 403, respecting the execution of work prescribed on municipal roads, sidewalks and bridges, by the road inspector or by the council in the

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name of the corporation, upon the default of the persons liable for such work, and respecting the recovery of the value of such work, apply with similar effect to work prescribed either under the provisions of this section, or prescribed on municipal water-courses, for the execution of such works by the rural inspector of the division, or by council in the name of the corporation, upon the default of the persons liable, and to the recovery of the value of work executed by such inspector or council.

409. Whenever the services of a rural inspector are required under the provisions of the four following paragraphs of this section, in any locality situate partly within the limits of the jurisdiction of one rural inspector, and partly within the limits of the jurisdiction of another, one or other of such inspectors may be required to act.

410. Every rural inspector, when required to act under the provisions of the four following paragraphs of this section, is entitled to ten cents for every hour employed in visiting the localities, as well as in managing and superintending the works, if he does not perform them himself.

He has also a right to be repaid any necessary outlay and costs incurred by him for notices, or other papers requisite, made under the same provisions.

Such costs are paid by the person whom the rural inspector finds in default. If no person is in default, they are paid by the party who demands the services of the municipal officer. In case of common or joint works, they are paid by all the parties interested, if they are all in default.

In case of refusal or contestation, they are recovered in the same manner and with the same rights and privileges as the value of municipal works performed by the road inspector.

411. The rural inspector whose services have been required by the municipal council, or for the benefit of the corporation, is not entitled to any fee from the latter ; the council may nevertheless allow him one.

412. Every special notice or order given by a rural inspector may be given either verbally or in writing, saving in cases otherwise provided for. Every order given by a rural inspector is given by special notice, subject to the provisions of article 228.

413. The rural inspector and any person interested may require from any possessor, tenant or occupant of any land, in the same manner as from the owner of such land, the fulfilment of every obligation imposed upon such owner in regard to clearings, boundary ditches, boundary fences or water-courses, saving the recourse of

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such possessor, tenant or occupant, against the proprietor, if any there be.

414. The rural inspector must, on being authorized for such purpose by the mayor or the secretary-treasurer of the local council, make or cause to be made, at the expense of the corporation in the snow or ice, trenches and all other works which are required to prevent floods and to facilitate the water in running off.

§ I. — *Public Nuisances.*

415. Whenever any filth or dead animal has been deposited upon any property whatever or in a water-course, stream or river, it is the duty of the rural inspector of the division, within twenty-four hours after he has received a special notice, either written or verbal so to do, to have such filth or dead animal removed by the person who deposited it. If the person who has deposited such filth or dead animal is unknown, it is the duty of the rural inspector, within the same delay, to cause the same to be removed at the expense of the corporation.

416. Whoever deposits or causes to be deposited any filth or dead animal upon any of the localities mentioned in the preceding article incurs, over and above any damages occasioned thereby, the penalties prescribed by article 391.

§ II. — *Clearances.*

417. The rural inspector, on either the written or verbal requisition of any owner or occupant of land in a state of cultivation, who requires a clearance to be made by his neighbor in virtue of article 531 of the civil code, must attend at the place where such clearance is required, after giving special notice of eight days in writing to the parties interested.

After an examination of the locality, and on proof that such clearance is necessary and has been demanded by special notice in writing, served before the first day of the preceding month of December, he enjoins by written order that, within the thirty days next following, all shrubs which are of a nature to harm the cultivated land within an extent of fifteen feet in depth along the whole line of separation of such lands, and all trees which are found within such extent, casting a shade upon such cultivated land, saving those excepted by law, or reserved for the embellishment of the property, be cut down.

Note. — Article 531 of the Civil Code is as follows:

Every proprietor or occupier of land in a state of cultivation, contiguous to uncleared land, may compel the proprietor or occupier of the latter to fell all trees along the line of separation which are of a nature

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to injure the cultivated land, and this on the whole length and, on the breadth, in the manner, and at the time determined by law, by regulations having force of law, or established and recognized usage. Trees, however, which may be preserved on or near the line, with or without curtailing the branches or roots, according to the three last preceding articles, are excepted.

Fruit trees and maple trees, which may be preserved in all cases near or along the line, but are subject to the same curtailing, are also excepted.

The fine for any contravention does not free one from the necessity of giving the clearance ordered by a competent tribunal, nor from the damages actually incurred since the party was put in default.

418. Whoever refuses or neglects to obey the orders of the rural inspector relative to the clearance incurs, without prejudice to the execution of such orders, a penantly not exceeding two dollars for each arpent in length of such clearance for the first year, and for every subsequent year a penalty equal to double that of the preceding year, over and above all damages occasioned to the cultivated land.

Decision. — An action for penalty under this article will be dismissed, unless it is proved that 8 clear days' notice, as required by art. 417, has been duly given, and unless the order given in virtue of that article, is signed by the rural inspector, in his official capacity. *Leduc* vs *Vigneau*, 12 Rev. Leg., 214.

419. The damages resulting from the refusal or neglect to make the clearance as required by the rural inspector are established by three experts appointed as follows: one by each of the interested parties, and the third by the two experts so appointed.

If one of the parties refuses to appoint an expert, he is appointed by a justice of the peace on the demand of the other party.

§ III. — *Boundary Ditches.*

420. The rural inspector, upon the written or verbal application of any owner or occupant, who demands the opening up of a boundary ditch between his land and that of his neighbor, must visit the locality of such proposed boundary ditch, where, after an examination of the place, and a hearing of the parties interested who have received three days' special notice thereof, he orders the performance of any works which he deems necessary, and determines how and by whom they must be executed.

Decisions. — 1. Held under the provisions of chap. 26, sec. 31 of the Consolidated Statutes, which are analogous to those of this article, that the opening of a boundary ditch between two properties can only be ordered when it is the best means of draining them; that the order of a rural inspector to open a boundary ditch must be considered as a judgment, establishing a servitude, and ought to be made in writing, and regulating in the manner of a *procès-verbal* the dimensions and direction of the boundary ditch; that such an order is illegal, when the boundary ditch is of a nature to cause damage to one of the parties, and when the lands are already drained by a water-course regulated by a *procès-verbal*; that the order of the inspector may be proceeded against by means of an action negatoire. *Lemire* vs *Courchène*, Q. B., 1 R. L. 506.

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2. If a neighbor digs a boundary ditch between his property and that of his neighbor, he does not create a legal servitude upon the property of his neighbor. He should apply to the municipal authorities, and avail himself of the services of the rural inspector, before digging such a ditch. *Roy* vs *Martineau*, 18 R. L., 381 (Q. B.)

3. Verbal notices to repair a boundary ditch are insufficient. *Guilbault* vs *Canadian Pacific Ry. Co.*, 21 R. L. 215.

421. The rural inspector, on the written or verbal application of one of the neighbors who complains of the insufficiency or bad condition of the common or joint boundary ditch, or of the part thereof for which his neighbor is liable, must, if it is necessary, order the person in default to deepen, cleanse and repair such ditch or part of a ditch, or to do his share of such work within a fixed delay. Such delay must not exceed the time absolutely necessary to perform such work.

In case the work be not performed within such delay, the inspector may authorize the complainant to do the work himself, the cost thereof to be recovered in the same manner as penalties under this code.

422. He may, at the same time, order the party complaining to deepen, cleanse or repair that part of the boundary ditch for which he is liable, within the same delay, if he finds such part insufficient or in bad condition.

423. Whoever refuses or neglects to comply with the orders of the rural inspector given in virtue of the preceding provisions of this paragraph incurs, over and above the damages resulting from the defect or insufficiency of his ditches, and without prejudice to the execution of such orders, a penalty not exceeding one dollar for every arpent in length of such ditch which he has to make, every fraction of an arpent being counted as an entire arpent.

424. Whoever obstructs or allows any boundary ditch to be obstructed in any manner whatsoever is liable to a penalty not exceeding one dollar for every day such ditch is so obstructed.

§ IV.—*Boundary Fences.*

425. The rural inspector of the division, on the written or verbal application of any owner or occupant who demands the construction or repair, or any works necessary for the preservation of a boundary fence between his land and that of his neighbor in virtue of article 505 of the civil code, must visit the boundary in question, where, after having heard the interested parties, duly notified thereof by a special notice of three days, and examined the works required, he orders any party in default, whether complainant or not, to construct or repair his boundary fence, so that it be good and firm, within the

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delay determined by such inspector. Such delay must be as short as possible.

Note. — Article 505 Civil Code reads as follows :

Every proprietor may oblige his neighbor to make in equal portions or at common expense, between their respective lands, a fence or other sufficient kind of separation according to the custom, the regulations and the situation of the locality.

Decisions. — A municipal corporation has no right to make boundaries between streets and properties abutting thereon, without first obtaining the consent of the proprietors, and in default of such consent, without taking the necessary proceedings before the Courts. *Irvine & al.* vs *The Corporation of Iberville*, 6 R. L. 241.

2. When a fence between two properties has been made and maintained by adjoining proprietors for a number of years, the jurisdiction of the rural inspector is limited to the right to decide if the fence is sufficient, or not, and to order repairs, if necessary. He exceeds his jurisdiction, if he seeks to modify the obligations existing by agreement amongst the neighboring proprietors. *Hanfeld* vs *Bienvenu*, 17 R. L. 560.

3. Under sec. 13, chap. 109 of the Revised Statutes of Canada, a railway company is not responsible for damages caused to the stock of neighboring farmers, in the absence of a fence, if such damages have only taken place within three months following the construction of the railway, or within the period of six months following the taking possession of the land by the railway. *Holt* vs *Meloche*, 34 L. C. J. 309.

425*a*. In the event of the works not being executed within such delay, the rural inspector may authorize either the complainant himself or any other person to execute the works, or to cause them to be executed, and the cost thereof is assimilated to municipal taxes, if it is not recovered in the same manner as penalties under the authority of this code. — R. S. Q., 6093.

425*b*. Whenever the waters of a river, serving as a division between two or more properties become sufficiently low during the summer season to allow of animals crossing it, the municipal council of the municipality may, on application to that effect, pass a by-law ordering the erection of a temporary fence there as elsewhere. — 61 Vic., ch. 50, s. 2.

426. The rural inspector cannot order the making, in a rural municipality, of a new fence, or the repairing of an old one when so dilapidated that the costs of repairing it would be equal to that of a new one, unless the party bound to do such work has received special notice in writing, to such effect, before the first day of the preceding month of ~~December~~ February.

427. Article 423 relative to boundary ditches applies also to persons liable for boundary fences.

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SECTION V. — OF POUND-KEEPERS

428. Pound-keepers are bound to receive and retain in safe keeping, animals found straying on any beach, flat, road or public place, or any land other than that of their owners, and impounded by the rural inspector or by any other person who finds them, until such animals are reclaimed by their owners, or sold at auction, under the provisions of this section.

429. Pound-keepers are bound to provide animals impounded under their charge with proper food in sufficient quantities, and to take proper care of them, under a penalty not exceeding one dollar for each day during which they neglect so to do, without prejudice to all damages occasioned by such neglect.

Such penalty belongs to the owner of the animal, and is recoverable by him only.

430. Whenever any animal is impounded, it is the duty of the pound-keeper, under a penalty of not less than two, nor more than ten dollars, for each act of neglect on his part, to give without delay special notice, either written or verbal, to the owner of animals impounded, if he is known and domiciled in the municipality.

431. If the animal is not reclaimed within the twenty-four hours which follow such special notice, or if the owner thereof is unknown or does not reside in the municipality, the pound-keeper must, under the same penalty, give public notice, in which are set forth the species and color of the animal, the place where it was found straying, and the name of the place where it is impounded, and he must further announce its sale by auction on a day fixed, unless such animal is reclaimed by its owner upon payment of all expenses, penalties, fees and costs incurred, as well as such damages as may be agreed upon, or as are determined according to article 442.

432. The owner of any animal impounded may demand its delivery, between the hours of seven o'clock in the morning and seven o'clock in the evening of any day, upon payment or legal tender to the pound-keeper of the expenses, fines, fees and costs incurred respecting such animal, and such damages as may be agreed upon, or are determined according to art. 442.

If the pound-keeper refuses or neglects to deliver the animal kept in pound after such payment or tender has been made, he incurs a fine of two dollars for every day he thereafter detains such animal, in addition to the damages occasioned by such refusal.

Decisions. — 1. The owner of an animal impounded cannot revendicate it, without the payment of its fine and costs of maintenance. *Brosseau* vs *Brosseau*, 1 M. L. R., S. C. 307.

2. He who impounds an animal which has strayed on his property

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ought to deliver this animal to its owner upon payment of the fine imposed by art. 440, and the damages that the animal has caused on the day it was impounded. He cannot retain the animal for the reimbursement of anterior damage. *Menier* dit *Lagacé* vs *Gardner*, 10 Q. J. R., S. C. 250.

3. Vide decision under art. 447, *post*.

433. If on the day fixed for sale, the animal impounded has not been reclaimed, and if the damages fixed, together with the penalties, fees, expenses and costs incurred have not been paid, such animal must be publicly sold by the pound-keeper to the highest and last bidder.

434. If on the day fixed for the sale, there are no bidders, the sale is adjourned to another day, and a public notice thereof is given without delay.

435. The price of adjudication must be instantly paid and before delivery, in default whereof the animal is again put up for sale.

436. The proceeds of the sale are employed in paying what is due in consequence of the impounding of the animal ; and the balance is placed without delay in the hands of the secretary-treasurer of the local council, and, if not reclaimed within a year by the owner of the animal sold, belongs to the corporation.

437. If the sale has not realized a sufficient sum, the owner of the animal is liable to make up the balance.

438. The owner of any animal so sold, if he does not reside in the municipality, or if his place of business is not situated therein, may reclaim his animal from the purchaser, within one month from the day of sale, by paying him ten per cent on the purchase money, over and above all disbursements for purchase, keep and other charge.

439. Whoever takes and conveys away any animal impounded, without permission from the pound-keeper, incurs a penalty equal to the sum claimed on account of such animal ; and, in addition, a fine of two dollars, or imprisonment not exceeding eight days, or both.

440. Penalties imposed on the owners of animals found straying, are for the first offence as follows :

For each stallion not under one year.	$6 00
For each bull, boar, or ram	2 00
For each gelding, colt, filly, mare, ox, cow, calf, heifer or hog ringed	0 25
For each hog not ringed, or goat	1 00
For each sheep.	0 10
For each goose, duck, turkey or other poultry.	0 05

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For each subsequent offence, the penalty is double that imposed in the last instance.

Such penalties may be paid to the pound-keeper before suit brought.

Decisions. — 1. An action for the recovery of fines incurred under this article cannot be maintained, if taken by the complainant in his own name, but the action may be maintained if taken thus, and also in the name of the Corporation. *Lahaie* vs *McMartin*, 7 Rev. Leg., 185. *Robert* vs *Doutre*, 5 R. L. 400. *Lami* vs *Rabonin*, 1 R. L. 687.

2. *Vide 2 under art.* 432.

441. The penalties mentioned in the preceding article may be paid to the pound-keeper before suit brought for their recovery.

442. In case of contestation, the damages occasioned by animals found straying are ascertained and determined by three experts appointed as fellows : one by the complainant, one by the owner of the animal, and the third by the two experts already appointed.

If the complainant or the owner of the animal is not present, his expert is appointed by the pound-keeper. If one of the parties, or in his absence, the pound-keeper, refuses to appoint his expert, he his appointed by a justice of the peace.

These experts must be appointed summarily and without delay, on the demand of the owner of the animal or of the complainant.

The experts at once proceed to view the damages and to render their judgment, which is final and conclusive.

The amount of damages determined by them is recoverable, in case of refusal to pay the same, in the same manner as penalties imposed under this code.

Decision. — Experts named to establish damages caused by straying animals cannot compel the parties to submit to their decision, unless the parties have agreed to do so.

The experts have only such authority within the conditions provided by Arts. 428, 429, 430 and 431 ; otherwise they have only the authority of witnesses. *Lacasse* vs. *Delorme*, 6 R. L., 210.

443. No one is entitled to compensation for damages caused upon his land by stray animals, if such damages are occasioned by the absence or defect of his boundary fences.

Decision. — In order to avail himself of this article the Defendant must not only show the bad condition of the Plaintiff's fences, but must show that the animals which caused the damage have passed through these fences, and that the Plaintiff was obliged to fence that locality. If the animals have passed through a place that nobody is obliged to enclose, each neighbor is responsible. *Lacasse* vs. *Delorme*, 6 R. L., 210.

444. It is not necessary that animals found straying be impounded, to give rise to a right of action against the persons permitting such animals to stray, for the penalty and damages occasioned.

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445. The occupant of any land is answerable for any animal he receives to pasture thereon, as if such animal were his own property.

446. Persons in possession of animals found straying or impounded have the same rights and privileges, and are subject to the same obligations, and liable to the same penalties as the owners of such animals.

447. Any owner or occupant of land, or any member of his family, may take and impound on his own premises any animal found straying in the municipality, on any beach, flat, road, public place, or upon any land, with the same powers and formalities, and under the same obligations and penalties as pound-keepers appointed by the council.

In cases which come under the provisions of this article, the animal so impounded cannot be sold except by the pound-keeper of the rural division, if there be one, or if there be no pound-keeper, or if he neglects to do so, then by the rural inspector of the division, without, however, in any manner, rendering the corporation, whose officers they are, responsible.

Decision. — The proprietor who impounds animals wandering on his land cannot retain them for the payment of damages caused by them on other occasions. *Smith* vs. *Brownlee*, 10 L. N., 405.

448. Penalties recovered under the provisions of this title, except in the case mentioned in article 429, are divided according to the rule prescribed in article 1048.

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BOOK SECOND

POWERS OF MUNICIPAL COUNCILS.

PRELIMINARY PROVISIONS

449. In addition to the powers which are conferred upon them by the provisions of this book, municipal councils may further exercise those conferred upon them by other provisions of this code, or of any other law not inconsistent with this code.

450. By-laws, resolutions and other municipal ordinances must be passed by the council in session.

Decision. — A council passes a motion containing the general purport of a new by-law and the by-law is edited afterwards. Held to be irregular, but in view of article 16 it was maintained under the circumstances. *Legault* vs. *Corporation of Jacques-Cartier.* 31 L. C. J., 323.

451. Municipal councils in exercising their powers, must comply with all the formalities prescribed by the by-laws in the municipality, in addition to the formalities required by the provisions of this code.

452. The powers specially conferred on any municipal council by the provisions of this code can be exercised by such council only.

Nevertheless, any council which, under the municipal code, no longer possesses the powers which were conferred upon it by acts antecedent to the coming into force of this code, may repeal the acts which it shall have passed under such powers.

TITLE FIRST

MUNICIPAL BY-LAWS

CHAPTER FIRST

GENERAL PROVISIONS.

453. The by-laws of municipal councils must not contain any provisions inconsistent with those of this code or of any other law.

Decisions. — 1. A municipal council cannot confer the right to establish in perpetuity a toll-bridge over a river within its limits nor can it forbid the fording of such river. *Corriveau* vs. *Corporation of St. Valier.* 17 R. L., 440 ; 15 Q. L. R., 87.

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2. Municipal corporations cannot by their by-laws violate contracts to which they are parties. A by-law imposing a tax of $1000 on a tramway is a violation of a contract permitting the construction of a tramway upon condition of the annual payment of $20 per car. *Street Railway Co. of Quebec* vs. *City of Quebec.* 16 Q. L. R., 11 ; 14 L. N., 879.

3. A provincial law imposing both fine and imprisonment is contrary to the provisions of the B. N. A. act. *Ex parte* Papin, 15 L. C. J., 334.

But see decision of Court of Appeals in contrary sense. *Aubry* vs. *Genest*, 4 Q. O. R., Q. B., 523.

Held (reversing the judgment of the Court of Review and re-affirming that of the Superior Court 16 Q. O. R., p. 1 and 14 Q. O. R., p. 124 respectively) : — 1. That the by-law of the City of Hull of 7th May 1894 creating a monopoly in favour of the respondent, exceeded the powers of the city and was illegal and null.

2. That the statute 58 Vic. (Que.) ch. 69, confirming the said by-law, unconstitutionl being an interference with trade and commerce.

3. That even if the said by-law were valid it did not give the respondents the exclusive use of the streets, nor the power to require the appellants to remove their poles erected with the permission of the city council. *Ottawa Electric Co.* vs. *Hull Electric Co.* 10 Q. O. R., 34, K. B.

454. Municipal by-laws come into force and effect as law, if not otherwise prescribed in the provisions contained in such by-laws, fifteen days after their promulgation, except always in the case of appeal to the county council, against the passing of a by-law by the council of a rural municipality, and in any other case otherwise provided for by the provisions of this code.

691-697

Decision. — Although the declaration in a by-law that it will come into force on the day of its promulgation is, in view of the terms of article 454, illegal, this illegality does not necessarily invalidate the by-law nor prevent its coming into force fifteen days after its promulgation. *Brosseau* vs. *Corporation of St. Lambert.* 11, Q. O. R., S. C., 425 ; 3 Rev. de Jur. 217.

455. Municipal by-laws which, in consequence of certain provisions of their own or of this code, can only come into force at some stated period, must be promulgated at least fifteen days before such period.

456. Every by-law passed by the council of a rural municipality, and amended or confirmed in appeal by the county council, comes into force fifteen days after its promulgation or publication in virtue of article 695.

457. The original of every municipal by-law, to be authentic, must be signed either by the head of the corporation, or by the person presiding at the time such by-law was passed, and by the secretary-treasurer.

If it has been necessary to submit the by-law for the approval of the municipal electors or of the lieutenant-governor in council, before it can come into force, and it has received one or other

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of such approvals, a certificate, under the signature of the head of the council and of the secretary-treasurer thereof, certifying to each of these facts, must accompany and form part of the original of such by-law.

Decisions. — 1. A by-law signed by the head of the council, after a session, will be held valid on proof that no change was made in the interval. The provisions of art. 457 do not entail nullity unless those of art. 16 are also violated. 11 Q. O. R., S. C. 348.

2. The Municipal Code enacts in the most positive terms that no by-law in regard to extraordinary expenditure shall have force and effect until it has been approved by the majority in number and value of the electors who have voted and also by the lieutenant-governor in council. This special expenditure is of the following kinds :

1. Expenditure for publics works outside the municipality, restricted by art. 481. 2. Issue of bonds or debentures for any purpose restricted by art. 496.

3. By-laws in regard to water-works, (637*a*, 637*b*). *Corporation of Point Gatineau* vs. *Hanson*, 10 Q. O. R., 371, Q. B.

458. The secretary-treasurer of the county council must transmit a certified copy of any by-law passed by such council to the office of the council of each local municipality within the limits of which such by-law is in force.

459. One or more of the subjects mentioned in the provisions of this title may be provided for in one and the same by-law, provided that each of such subjects is within the jurisdiction of the council which passes such by-law.

In the case of several subjects provided for in one and the same by-law, requiring the approval of the municipal electors or of the lieutenant-governor in council, one approval, given either by the municipal electors or by the lieutenant-governor, or by both, if necessary, suffices for the entire by-law.

460. The council may also exercise by resolution the powers conferred upon it by articles 471, 474, 475, 476, 477, 478, 484, 485, 486, 487, 488, 499, 503, 504, 505, 506, 518, 519, 526, 527, 541, 543, 555, 556, 586, 587, 588, 589, 590, 591, 608, 625 and 663.—R. S. Q., 6094.

461. Municipal by-laws are binding until they have been annulled by the Magistrate's Court, or by the Circuit Court for the county or district, saving all recourse for damage against the corporation, as prescribed by the rule laid down in articles 706 and 707.

462. Municipal by-laws remain in force until they are amended, repealed or anulled by some competent authority, or until the time for which they have been made has expired.

Decision. — Although a council ought not to abrogate a by-law otherwise than by by-law, nevertheless if in good faith, a council by simple resolution abrogates a by-law made in virtue of arts 617 and 618, such

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resolution will not be declared null, and the election held without regard to the division sanctioned by such by-law will not be annulled, unless some substantial injustice has been suffered. *Lequin* vs *Meigs*, 16 L. C. J., 153.

463. Municipal by-laws which were submitted to the approval of the municipal electors, or of the lieutenant-governor in council, or of both, before they came into force and effect, can only be amended or annulled by another by-law approved of in the same manner.

CHAPTER SECOND

BY-LAWS WITHIN THE JURISDICTION OF ALL MUNICIPAL COUNCILS

464. Every municipal council has a right to make, amend or repeal by-laws, which refer to itself, its officers, or the municipality upon any of the subjects mentioned in this chapter.

SECTION I.—GOVERNMENT OF THE COUNCIL AND ITS OFFICERS

465. To compel members of the council to attend the sittings of the council or the committees thereof, and to perform their duties thereat.

Decision. — Notwithstanding the provisions of the Revised Statutes of the Province, secs. 24, 62, the members of a council cannot be condemned to pay a fine unless in virtue of a by-law passed by the council. *Plante* vs. *Rivard*, 2 R. L., 240.

466. To regulate the manner in which debates are to be carried on, and order and decorum preserved during the sittings of the council or of the committees.

467 To fix the number of days the ordinary sessions may last.

468. To order that the municipal by-laws, before the passing thereof, be read two or three times, either on the same or on different days.

469. To appoint an officer, whose duty it shall be to serve the special notices required by the provisions of this code or of municipal by-laws, and to oblige such officer to take an oath of office.

The appointment of any such officer does not render other municipal officers incapable of making the service which they are authorized to make by this code.

470. To define the duties not defined by this code, of the officers of the council ; and to impose penalties in accordance with article 508, for negligence or omission in the performance of their duties,

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in cases in which penalties have not been fixed by this code for any such act of neglect or omission.

471. To establish a tariff of fees payable to municipal officers for their services, whether by the persons who have required such services, by those in whose interest they were rendered, or by the corporation, in the cases where the fees for such services have not been determined by the provisions of this code.

Every tariff made in virtue of this article must be posted up in a conspicuous place in the office of the council.

472. To fix the remuneration of municipal officers by the council, in addition to the fees or penalties which they are entitled to receive under the authority of this code, of any other act, or of any municipal by-laws.

Decision. — The person charged with the making of a roll of assessment cannot of himself fix the amount of his remuneration but should have it fixed by the council. *Corporation of Ile Bizard* vs. *Poudrette*, Davidson J., 30 June 1893.

473. To determine upon what days of the week the office of the council is to be kept open, between nine o'clock in the forenoon, and four o'clock in the afternoon.

In default of the council determining such office days in virtue of the preceding provision, the office of the council must be kept open every juridical day, during such hours.

474. To order the publication, in one or more newspapers, of the notices of meeting of the council, without prejudice to the provisions of articles 126, 139, 260 and 290.—R. S. Q., 6095.

Section II.—Public Works of the Municipality

475. To order and regulate, when in the interest of the inhabitants of the municipality, or of a considerable portion thereof, the construction, opening up, widening, deepening, altering, repairing, or maintaining at the expense of the corporation, of all ditches, water courses, sewers, embankments and fences.

Every by-law made in virtue of this article, concerning a water-course governed by an act of agreement, or by a *procès-verbal*, has the effect of subrogating the corporation in the place and stead of the persons bound to work at such water-course, in so far as the obligation to do such works is concerned.

Decisions. — 1. The flooding of a house caused by heavy rains, the public drain being obstructed, renders the municipal corporation liable in damages, from the date it was put in default to repair such drain. *Boucher* vs. *Mayor* and *aldermen of Montreal*, 15 L. C. J., 72; *Leduc* vs. *City of Montreal*, 8 L. N., 226.

2. The council may decide upon the construction of a sewer by re-

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solution or by by-law, but the maintenance of it and the taxation necessary to defray the cost of it ought to be determined by by-law. *Archambault* vs. *Corporation of St. Francis d'Assissi of Longue-Pointe*, 3 Q. O. R., S. C., 100.

476. To authorize road inspectors to permit the execution of certain works, on municipal roads, fords, ferries, sidewalks or bridges, under the control of the council, which might have the effect of obstructing, impeding, inconveniencing and rendering passage on such public works dangerous ; and in every such case, the council must determine the conditions under which such permits may be granted.

476*a*. To order that fences be made of wire along municipal roads at the places which the council deems expedient.—R. S. Q. 6096.

Note. — Vide *infra* art. 776.

SECTION III.—AID IN THE CONSTRUCTION, IMPROVEMENT AND MAINTENANCE OF PUBLIC WORKS OR UNDERTAKINGS NOT BELONGING TO THE CORPORATION

477. To assist by money, granted or lent, in the construction of any macadamized road, or the repair or maintenance of any road leading to the municipality, or of any bridge or public work under the direction of the corporation of any other municipality.—R. S. Q. 6097.

478. To aid in opening up and improving the colonization roads, declared by the lieutenant-governor in council to be colonization roads of the second or third class, in which the corporation has been held to be interested, in virtue of any law concerning colonization roads.

479. To aid in the construction of any bridge, cause-way, pier, wharf, slide, macadamized or paved road, omnibus or diligence lines, iron or wooden railroad, or other public work, situated in whole or in part within the municipality or its vicinity, undertaken and built by any incorporated company, or by the provincial government, or by any person or firm of persons :

1. By taking and subscribing for shares in any company formed for such purpose ;

2. By giving or lending money or debentures to such company, or to the provincial government or to any person or firm of persons who undertakes the establishment of any of the public works above mentioned ;

3. By guaranteeing, by endorsation or otherwise, any sum of money borrowed by such company, or by the government or by such person or firm of persons ;

4. By acquiring the right of way in the municipality for any rail-

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way company, either by mutual agreement, or by paying the price of the lands necessary for that purpose, as established by an expropriation made for that purpose under the provision of the railway act ;

5. To provide for the establishment, construction or running, within the municipality, of lines of omnibuses, stages, or tramways driven by steam or electricity, undertaken and built by incorporated companies or by any person or firm ;

6. To grant, to any company, person or firm of persons who undertakes or has already undertaken to establish, construct or run such lines of omnibuses, stages or tramways driven by steam or electricity, a privilege for laying rails and running omnibuses, stages or electric or steam cars over its roads and streets, or within the limits of the said municipality, and to grant such persons an exclusive privilege for ten years ;

7. To exempt from municipal taxes, for a period not exceeding twenty-five years, any company, person or firm who undertakes or has already undertaken to establish, construct or run such lines of omnibuses, stages or tramways driven by steam or electricity.—R. S. Q. 6098 ; 52 Vict., ch. 54, s. 5 ; 57 Vict., ch. 51, s. 3.

Decisions. — 1. When the amount of a corporation subsidy to a railway company is payable either in cash or debentures, the corporation cannot be deprived of its right to issue debentures by a protest from the company fixing a delay for their issue. A formal judgment should intervene. *La compagnie du chemin de fer des Laurentides* vs. *Corporation of St. Lin*, 24 L. C. J., Q. B. 191.

2. As to damages other than interest for neglect to deliver debentures. *Montreal, O. and Occid. R. Co.* vs. *Corporation of the county of Ottawa*, 5 L. N., p. 132. In appeal, 28 L. C. J., 29.

3. As to collection of tolls and placing of toll-bars on railway. *Turnpike Co. of Pointe Claire* vs. *Leclaire*, 1 M. L. R., Q. B., p. 296.

4. A by-law imposing a tax to aid in the construction of a bridge outside the limits of the municipality is null unless in the interest of the municipality. 17 Q. L. R., 341.

480. To aid in the establishment of manufactories and the construction of electric telegraph or telephone lines :

1. By subscribing for and holding stock in any company formed for such purposes ;

2. By giving or lending money or debentures to such company, or to any person or firm of persons who undertake the establishment of a manufactory in the municipality, or the construction of electric telegraph or telephone lines.—R. S. Q., 6099.

481. Every by-law passed in virtue of the two preceding articles, shall, before coming into force and effect, be approved by the majority in number and in value, of the electors being proprietors of taxable

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real estate who have voted in the municipality, and by the lieutenant-governor in council.

No property exempted from municipal taxation by the by-law of the council, or in connection with which a subsidy or bonus has been granted by the council, shall be computed in the value above mentioned.—53 Vic., chap. 63, s. 2.

Decision. — On a voting by proprietors upon a by-law submitted to them, it is irregular for the official presiding over the voting to strike off certain names that appear on the voting list.

Upon a petition asking that the by-law be declared invalid for such irregularity the court may examine the votes to ascertain whether a majority has or has not approved the by-law by their votes. *Lajeunesse* vs. *Corporation of St. Jerome*, 5 Rev. de Jur., 369.

482. If the price of the shares fixed upon by a by-law of the council passed in virtue of articles 479 and 480 is not in hand, none of such shares can be taken or subscribed for in execution of such by-law, by the head of the council or other person thereunto authorized, before the council has ordered an issue of debentures, or a loan to be contracted, sufficient to cover the amount of shares to be subscribed for.

483. By-laws made in virtue of articles 477, 479 and 480 may determine the conditions under which assistance or subscription for shares is authorized.

SECTION IV.—AID TO COLONIZATION, AGRICULTURE, HORTICULTURE, ARTS AND SCIENCES.

484. To aid, in every suitable way, colonization within the province ; to aid agriculture, horticulture, arts and sciences, within the municipality, or within the limits of the agricultural society in which such municipality is situated.—R. S. Q., 6100.

484*a*. To establish and manage alms-houses or other establishments of refuge for the support of the necessitous ; and to aid charitable institutions established in the municipality.—R. S. Q., 6101.

SECTION V.—ACQUISITION OF PROPERTY AND PUBLIC WORKS.

485. To acquire, gratuitously or for a consideration, either in whole or in part, all beach lots, bridges, toll-bridges, roads, wooden railways, macadamized roads, piers, wharves, dykes, embankments, or other public works, a part at least whereof is situate within the limits of the municipality, together with the lands and dependencies required for the use or management of the same.

Decisions. — 1. The powers of turnpike trustees is limited to the road-bed. They cannot legally interfere with road-widening, laying of drains, etc. *Murray* vs. *Town of Westmount*. 6 Q. O. R., Q. B., 345.

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2. The obligation of a municipal corporation to open and continue certain streets, being in this case a simple contractual obligation of a private nature, there is no ground for a writ of *mandamus* to force the corporation to fulfil its obligation particularly as the common law supplied a sufficient recourse, and also because the charter of the respondents made the opening of streets discretionary with them. *Page* vs. *Town of Longueuil*, 7 Q. O. R., 262, Q. B.

3. Besides the modes prescribed by the Municipal Code, municipalities may acquire lands for public roads as follows: 1. By dedication. 2. By thirty years' use and possession. 3. By public uncontested use for ten years in accordance with the provisions of 18 Vic., ch. 100., art. 40, par. 9.

Fences established by former proprietors are useful aids in determining the question of dedication. *Jones* vs. *Corporation of the village of Asbestos*. 19 Q. O. R., 168. S. C., Lemieux, J.

486. To acquire, for the use or in the interest of the corporation, either gratuitously or for a consideration, any other land situated either within or without the limits of the municipality.

487. To acquire, either gratuitously or for a consideration, from the government of the province or from the government of Canada, any public roads, wharves, canals, harbors, bridges or public buildings, whether within or without the limits of the municipality, and which such government finds desirable to place under the control of the municipal corporation.

488. To provide for the lease, purchase or erection of any building which the corporation requires.—R. S. Q., 6102.

Decision. — A by-law which authorizes a council to take shares in a property required for the needs of the council is null. *Marshall* vs. *Corporation of South Stukely*, 4 Rev. de Jur., 137.

488*a*. To provide for the establishment, protection, and management of water-works, public wells or reservoirs, and to prevent public water from being soiled or wastefully used; and to exercise all the powers granted to village corporations by articles 637, 637a, 637b, 638, 639, 640, 640a, 640b, 640c, 640d, 640e, 640f, 640g, 640h and 640i, under the same conditions and formalities, subject to the approval of the majority of the rate-payers required by the by-law to pay the cost of the work, and the ratification of the lieutenant-governor in council.—R. S. Q., 6103; 57 Vic., ch. 51, s. 4.

Section VI.—Direct Taxation

489. To levy by direct taxation on all the taxable property, or only on all the taxable real estate of the municipality, any sum of money required to defray the expenses of administration, or for any special purpose whatever within the scope of the functions of the council.

Decisions. — 1. A by-law ordering the raising of money to pay "the

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liabilities of the corporation and the expenses of the municipal council for the year 1869" without indicating in a precise and determinate manner what the liabilities and expenses are, is null: Every tax-payer may recover what he may have paid in virtue of such by-law. *Dubois* vs *Corporation of Acton Vale*, 2 R. L., 585.

2. A by-law to raise a tax "to meet a part of the debts and the expenses of administration" is legal, although not indicating such expenses in a clear and precise manner — the petitioner having admitted that they were legitimate. *Lafond* vs. *Corporation of Iberville*, 14 R. L. 654.

3. In general, a by-law imposing a tax should indicate clearly the expenses and debts to be met and must be based upon estimates that are precise and exact. *Goulet* vs. *Corporation of St. Martha*. 29 L. C. J. 107.

4. A tax cannot be imposed otherwise than by by-law. *Corporation of Hochelaga* vs. *Corporation of Cote St. Antoine*, 6 L. N., 119; 27 L. C. J., 177.

490. To levy by means of direct taxation on all the taxable property or only on the taxable real estate belonging to those persons who, in the opinion of the council, are interested in any public work under the control of the corporation, or belonging to those who benefit by such work, all sums of money required for the construction and maintenance of such work.—R. S. Q., 6104.

Decisions. — See art. 405.

491. To levy, by means of direct taxation, money required for any purpose within the scope of the functions of the council, on all taxable property, or only on all taxable real estate comprised within a part of the municipality, on petition by the majority of the rate-payers liable to pay such tax, to the extent and under the conditions set forth in such petition.

The county council only exercises the power conferred by this article when the territory, by the majority of the rate-payers of which such petition was presented, is situated in two or more local municipalities of the county, or when the money to be raised and levied is to be employed on some public work which falls under its jurisdiction.

Decision. — A local council may, by resolution order the construction of a drain, but the maintenance and cost of it can only be provided for by by-law. *Archambault* vs. *Corporation of Longue-Pointe*, 3 Q. O. R; S. C. 100.

Section VII.—Loans and issue of Debentures.

492. To borrow money in sufficient sums for any purposes within the jurisdiction of the council.

Decisions. — 1. *Corporation of L'Assomption* vs. *Baker*, 4 L. N. 370; *Town of Iberville* vs. *La Banque du Peuple*, 4 Q. O. R. 268.

2. A by-law authorizing the borrowing of money for the construction of a bridge and other works, and which is indefinite as to when such works will be executed, is null. *Poulin* vs *Corporation d'Aubert Gallion*, 17 Q. L. R. 342.

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3. The provisions of arts. 492 *et seq.* of the Municipal Code, which forbid municipal corporations from borrowing otherwise than by by-law, do not apply to a temporary loan of a small amount for urgent and immediate requirements.

A resolution authorizing the mayor and secretary-treasurer to borrow $500, upon a promissory note for urgent repairs to roads and sidewalks is legal. *Giroux* vs *Corporation Coteau Landing*, 17 Q. O. R., 271, C. C.

See also *Breton* vs *Corporation St. Michel*, 4 Q. O. R., 484. Q. B.

493. To issue debentures for any amount deemed requisite, to obtain money for any purposes within the jurisdiction of the council.

494. Every municipal by-laws which orders or authorizes a loan or an issue of debentures must declare the purposes to which the sum so borrowed must be applied, and may contain all provisions deemed requisite to ensure the proper application of the money and the attainment of the end set forth in the by-law.

495. No debentures can be issued, and no loan can be contracted, unless the by-law which authorizes the same imposes upon all taxable property liable for the payment of such loan or debentures, an annual tax sufficient for the payment of the yearly interest thereon, and at least two per cent over and above such interest, as a sinking fund, until the extinction of such debt ; the apportionment of the moneys to be levied for the payment of the interest and the sinking fund annually shall be based on the roll in force at the time of such apportionment, without prejudice to the rights of debenture holders. —R. S. Q., 6105.

Decisions. — 1. *Corporation of Waterloo* vs *Community Jesus Mary*, 2 Rev. Jur. 29.

2. So held in *Corporation, Village of Point Gatineau* vs *Hanson et al.* 10 Q. O. R., 347. Q. B.

496. Every by-law which orders or authorizes a loan or an issue of debentures must, before coming into force and effect, be approved by the electors of the municipality, when the taxable property or the taxable real estate of the whole municipality is subject to the payment of such loans or debentures, and in all cases by the lieutenant-governor in council.

497. If only the taxable real estate of the municipality is liable for the payment of such loan or debentures, the persons who are proprietors of such real estate are alone entitled to vote in approval or disapproval of such by-law.

In such case, widows and spinsters in the exercise of their rights shall also have the right to vote, provided they possess the other qualifications required to be a municipal elector, according to article 291.—R. S. Q., 6106.

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498. It is the duty of the secretary-treasurer of the council which has passed any such by-law to forward to the lieutenant-governor, together with a copy of the by-law submitted for approval, a statement showing the total value of taxable property liable under such by-law, and all the debts and liabilities of the corporation.

Such statement must be attested under the special oath of the secretary-treasurer.

Section VIII.—Administration of Corporation Funds.

499. To deposit at interest in a chartered bank, or to invest in the public funds of Canada, or of this province, or on first hypothec, any moneys belonging to the corporation.

When the sums are intended to form a sinking fund for the redemption of debentures issued, the council may, instead of depositing the same in an incorporated bank, redeem its own debentures.

Any municipal corporation which had any agreement with any incorporated bank or other institution, for depositing a sinking fund in virtue of any resolution or by-law of such corporation, or otherwise to redeem debentures issued by such corporation in virtue of any such by-law previous to the 28th December 1876, may withdraw any money deposited in virtue of the same, together with the interest thereon accrued, with the consent of such bank or institution, provided the money be applied forthwith to purchase the debentures issued for which such sinking fund is payable.

Any such bank in which such sinking fund may have been deposited may pay over all such money, as well as the interest thereon accrued, to such municipal corporation, on receiving a resolution of the council of such municipality to that effect.—R. S. Q., 6107.

500. The secretary-treasurer is always authorized, even in the absence of any by-law or resolution to that effect, to deposit temporarily in a duly chartered bank all moneys proceeding from municipal taxes or dues or belonging to the corporation, and to leave such moneys at deposit, until applied to the purposes for which they were levied, or until disposed of by the council.

He is bound so to do, when required by the council or by the head of the council.

501. All sums of money not especially appropriated form part of the general fund of the corporation.

Whenever any sum levied exceeds in amount the sum required by the council to meet the liabilities for which such sum was raised, the surplus belongs to the corporation, and falls into the general fund thereof.

502. All sums of money forming part of the general fund of the corporation may be employed for any purpose within the scope of the functions of the council.

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SECTION IX.—MISCELLANEOUS PROVISIONS

503. To establish and manage a sinking fund for the purpose of liquidating any municipal debt.

504. To have a census taken of the inhabitants of the municipality, or of a portion of the municipality.

505. To give rewards for the destruction of wild animals ; and to determine the conditions upon which such rewards are given.

506. To offer and give rewards for information which may lead to the discovery and arrest of persons who have committed criminal offences.

507. To authorize the officers of the council to visit and examine all property, whether moveable or immoveable, as well as the interior or exterior of every house, building or other edifice, to ascertain whether or not the by-laws of the council are carried out.

To oblige owners or occupants of such properties, buildings and edifices to receive the officers of the council, and to answer truly all questions which are put to them relative to the carrying out of such municipal by-laws.

508. To impose for each violation of any by-law of the council a penalty, in the shape of a fine not exceeding twenty dollars, or imprisonment not exceeding thirty days.

Penalties imposed for violation of municipal by-laws can not be inflicted by the court, unless they are fully described and set forth in the by-laws respecting them.—R. S. Q., 6108.

Decisions. — 1. A by-law imposing as a penalty for its infraction a fine *and* imprisonment is illegal. *Corbeille* vs *Corporation of St. Jean-Baptiste*, 7 R. L. 616.

2. *Papin* vs *The Mayor, etc., of Montreal*, 16 L. C. J. 319.

3. A by-law decreeing a penalty for each day that an offence continues, not authorized by the statute on which it is based, is null. *Brown* vs *Sexton*, 18 L. C. J. 194.

4. A conviction condemning to costs is illegal, unless authorized by the by-law. *Marry* vs *Sexton*, 14 L. C. J. 163.

5. Cumulative punishments are within the powers of the legislature to enact or delegate. *Aubry* vs *Genest*, 4 Q. O. R ; Q. B. 523.

6. A municipal by-law which enacts that every loaf made for sale in the municipality ought to have a certain specified weight and fixes a penalty for its contravention, will be held to mean that the weight refers to the condition of the loaf when baked and not when sold. *Corporation of St. Joseph de Lanoraie* vs *Picard*, 6 Rev. de Jur. 547.

7. The provincial legislature may make police regulations for the preservation of the peace but such regulations must not in any way conflict with Dominion legislation. A by-law enacting a mode of trial and penalty different from those provided by the Criminal Code is *ultra vires*. *Ashley* vs *City of Montreal*, 6 Rev. de Jur. p. 228, S. C.

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509. Every council may also, in the interest of the inhabitants of the municipality, make, amend or repeal any other by-law for a purely local and municipal object, and not specially provided for by this code.

Decision. — *Desroches* vs *la Corporation de St-Bazile le Grand*, 17 R. L. 266.

509*a*. Every municipal council has further all the powers granted to county councils by article 521.—R. S. Q., 6109.

CHAPTER THIRD

BY-LAWS SPECIALLY WITHIN THE JURISDICTION OF COUNTY COUNCILS

510. Every county council may also make, amend or repeal by-laws for any of the objects mentioned in this chapter.

SECTION I.—CHIEF PLACE

511. To fix or change the chief place of the county.

Nevertheless the chief place of the county can only be changed by a by-law passed with the concurrence of two-thirds of the members of the council in office. After a registry office has been established therein, according to the provisions of article 2158 of the civil code, or a public building for the use of such council has been provided, or is in course of construction, the chief place can only be changed by the provincial legislaure.

SECTION II.—CIRCUIT COURT AND REGISTRY OFFICE OF THE COUNTY

512. To determine the place where the Circuit Court for the county is to be held, in conformity with the provisions of chapter seventy-nine of the consolidated statutes for Lower Canada.

513. To provide for the construction of a building designed for the the Circuit Court at the place appointed for such purpose ;

2. To provide for the purchase or acquisition of land suitable for the erection of such building, and the expropriation of the land necessary for the buildings already existing for such purpose, whether the building is situate within the limits of the municipality of the county itself, or within the limits of a city or town comprised in the same registraton division ; and such expropriation may take place notwithstanding the provisions of the charter of such city or town or other provisions to the contrary.

The corporation of every town or city municipality, which is comprised in the same county for judicial or registration purposes, is

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bound to contribute to the expenses incurred or to be incurred by the corporation of the county in virtue of this article, for the court-house at the *chef-lieu* of the county, as well as to the costs of repairs deemed necessary thereafter, in the same proportion as the other local corporations of the county, in accordance however with the total amount of the valuation of its taxable property ; and the corporation of the county may determine its share and recover the amount thereof as from any other municipal corporation.

If the council of such town or city refuses or neglects to produce at the proper time an authentic certificate of the valuation of its taxable property, the county council may fix the amount of its share, as it may deem just.—R. S. Q., 6110.

514. To provide for the construction and maintenance of a registry office either apart from or forming part of any court-house in the county, with a metal safe, or fire-proof vault for the preservation of the books, deeds and papers of the office.

2. To provide for the purchase of the land necessary for its erection, as well as for the manner of effecting the expropriation of the land required for the present buildings for that purpose, whether such building be situate within the limits of the county municipality itself or within the limits of a city or town included within the same registration division, notwithstanding the provisions of the charter of such city or town, or other provisions to the contrary.

The council shall keep in proper repair the building used as a registry office, as well as its dependencies, in the same manner as a lessor is obliged by law to keep leased premises in repair.

Decisions. — 1. Where a by-law orders the nomination of a committee to buy land and build certain buildings thereon, the committee cannot derogate from their duty to construct other buildings even if the cost be no greater. The contractor has no right of recovery against the corporation which notified him that it would decline responsibility. *Fournier dit Préfontaine* vs *Corporation of Chambly*, 14 L. C. J. 295.

2. Action by Registrar against county council for the cost of furnishing, heating and cleaning offices provided was dismissed as no such obligation exists in law. *Marchand* vs *Corporation County of St. John*, 5 Rev. de Jur. 70.

See also *Corporation County of Richelieu* and *City of Sorel*, 5 Rev. de Jur. 452. (Arts. 514 and 515 *infra*.)

515. Every county corporation is bound to provide and keep constantly in perfect repair a suitable and ample metal safe or fire-proof vault in the registry office of the county or registration division, no matter where the building may be situated, in which such registration office is established or removed to.

Every corporation which omits or neglects to comply with the provisions of this article is liable to the Crown in a penalty of two

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hundred dollars recoverable as a debt due to Her Majesty, and is further responsible for all damages occasioned by such omission or neglect.

The corporation of any city or town municipality comprised within the same county for registration purposes is obliged to contribute to the costs incurred by the corporation of such county under the present article, as well as the costs occasioned for the erection and repair of the place absolutely required for registry offices, in the same proportion as the other local corporations of the county, according however to the total amount of the valuation of its taxable property; and the county corporation may determine its share and recover the amount thereof, in the same manner as from any other local corporation.

If the council of such city or town neglects or refuses to produce at a suitable time an authentic certificate of the amount of the valuation of its taxable property, the county council may determine the amount of its share as it may deem proper.—R. S. Q. 6111.

Decisions.—1. A town council must contribute to the cost of a registry office. *Corporation of Argenteuil* vs *Corporation of Lachute*, 21 R. L. 8.

2. A by-law passed by a county corporation under arts. 514 and 515 with a view to exacting from the defendant its share of the cost of the works, must include only the actual cost and not any additional works. *Corporation of Richelieu* vs *City of Sorel*, 5 Rev. de Jur. 452. S. C.

3. *Fournier dit Préfontaine* vs *Corporation of Chambly*, 14 L. C. J. 205.

516. If it is established that a registry office is without a vault or safe, or that such vault or safe is defective, the lieutenant-governor may order the recovery of such penalty from the county corporation in default, and may cause a proper safe to be placed, or a proper vault to be built in such registry office, or the existing safe or vault to be renewed or repaired at the cost of the province; and the sum so expended may be recovered from the corporation as a debt due to the Crown.

517. If there are several county municipalities in the same registration division, the penalty, expenses and costs are due by all the county corporations, and may be recovered from any one of them, saving its recourse against the others for their proportions.

518. To ensure the copying of all deeds which must be deposited in the registry office, according to the ninety-fourth section of chapter thirty-seven of the consolidated statutes for Lower Canada.

Section III.—Roads and Bridges

519. To cause mile posts and guide posts to be set up on municipal public roads, or on those belonging to trustees of turnpike

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roads or others, to show the distance from the principal places to which such roads lead, at the expense of corporations of local municipalities in which such mile posts are placed.

520. To place toll-bars on the bridges under the control of the corporation of the county ; and to levy toll on the persons, animals and vehicles which pass over such bridges.

The council may, by such by-law or by any subsequent by-law, exempt from tolls such persons as it may deem desirable.

By-laws made under this article have no force and effect, until they have been approved by the lieutenant-governor in council.

520*a*. To fix at two inches and one half at least and four inches at most the width of wheel tires of waggons carrying heavy loads, used by persons residing in the municipality, and to prohibit them from using any such waggons with wheel tires of a less width on municipal roads, or on roads belonging to trustees of turnpike roads or others, in the municipality.

521. Subject to the provisions of article 5766 of the Revised Statutes of the province of Quebec, to prohibit the use by persons living in the municipality of any winter vehicles on municipal roads or on roads belonging to trustees of turnpike roads or others, unless the horse or horses or other beasts of draught, when they are not harnessed abreast, be harnessed in such a manner that the left runner of the vehicle shall run in the tracks of such horse or horses or other beasts of draught ; and further to regulate the length and breadth of the vehicle to be used by such persons on such roads. And in such case no person shall be permitted to make use of any winter vehicles other than those above mentioned.—R. S. Q., 6112.

522. To prevent, on the opposition of any interested party, the construction of macadamized or planked roads by road companies, according to the provisions of chapter seventy of the consolidated statutes of Lower Canada.

522*a*. To acquire one or more machines, stone crushers and rollers to improve and maintain by roads and roads whether local or county ; to make arrangements with the local municipalities and the corporations of towns and villages with a population of less than four thousand souls, situate within the limits of the county, for the purpose of allowing them the use thereof for their roads, and to fix the price for their use, or to give them the gratuitous use thereof.

522*b*. To acquire such machines jointly with the town corporations coming within the provisions of the preceding article, and to make, respecting the said machines, the arrangements mentioned in the said article with local or county municipalities.—61 Vic., ch., 51.

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522*c*. To enter into an agreement with an agricultural society in the limits of the county, by means whereof the society shall apply the whole or part of the subscriptions of its members or public grant which it receives or of both to the payment of part of the cost of purchasing or working such machines, stone-crushers and rollers.

SECTION. IV—FIRE IN THE WOODS

523. To determine the periods of the year during which fire must not be applied within the limits of the municipality to lands, brushwood, trunks or trees, stumps, fallen trees and other timber, for the purpose of clearing or improving lands, subject however to the provisions of the law respecting the clearing of lands and the protection of forests against fires.—R. S. Q., 6113.

SECTION V.—INDEMNITY TO MEMBERS OF THE COUNCIL

524. To award and fix an indemnity to the warden, to the members and to the delegates of the council, for their travelling expenses and board.

CHAPTER FOURTH

BY-LAWS SPECIALLY WITHIN THE JURISDICTION OF LOCAL COUNCILS

525. Every local council may further make, amend or repeal by-laws for each of the objects mentioned in this chapter.

SECTION I.—PUBLIC HIGHWAY

§ *I. Roads and Bridges*

526. To order the opening, construction and maintenance of public roads or bridges in the municipality, under the management of the council.

Decisions. — 1. A corporation cannot bind itself by promise to pass a by-law for the opening of a street. *Brunet* vs *Corporation Village of St. Louis*, 2 M. L. R ; Q. B. 103.

2. A petitory action may be instituted when a corporation illegally parts with land for the opening of a street and an action for damages may be united to such action : *Corporation St. Gabriel West* vs *Holton*, 8 R. L. 293.

3. Municipal works which change the level of a street give tenants the right to a diminution of rent or resiliation of lease and even to damages. *Motz* vs *Holiwell*, 1. Q. O. R. 64.

4. The powers of the Railway Committee created by Federal Statute

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51 Vic., ch. 29, s. s. 11 and 14, with reference to roads and streets crossing a railway cannot be exercised unless a complaint or demand be addressed to the committee. In the absence of any such complaint or demand the general powers of municipal councils apply. *Corporation of St. Valentin* vs *Comeau*, 3 Q. O. R. 104.

527. To order the widening, altering, or change of position, abolishing, closing, of all municipal bridges or roads in the municipality.—57 Vic., ch. 51, s. 5.

Decisions. — 1. A corporation, which by by-law is charged with the control and maintenance of a bridge built by private means and assumes the obligation of opening two roads leading to the bridge, may after the fulfilment of its obligations abrogate such by-law. *Daigneau* vs *Corporation East Farnham*, 6 Q. O. R ; Q. B. 258.

Vide decisions under art. 530.

528. Whenever a municipal council has passed a by-law or resolution in virtue of the two preceding articles, the proceedings prescribed by the provisions of article 794 and the following articles to article 821 inclusively, must be carried on without delay, to regulate, determine, and apportion the works ordered by such by-law.

529. Nevertheless, if the works must be executed at the expense of the corporation, under article 535, no *procès-verbal* is made, and the works are regulated and determined by the council which orders the same.

530. To order, after having given public notice, the closing or destruction of any municipal road in the municipality, whether governed by a *procès-verbal* or not.

Decisions. — 1. A municipal corporation is liable for damages incident to closing a street, even though authorized in general terms by statute without mention of liability for damages. *Mayor, etc. of Montreal* vs *Drummond*, 18 L. C. J. 225.

Privy Council decision ; 22 L. C. J. 1.

2. *Corporation Township of South Ireland* vs *Larochelle*, 13 R. L. 697.

3. A municipal council cannot abolish a right of way leading to a neighbouring municipality without notice to the latter. *Corporation of St. Romuald* vs. *Corporation County Lévis*, 1. Q. O. R. 310.

531. The opening, constructing, widening, altering, diverting, or keeping in repair of municipal roads or bridges may also be ordered by a *procès-verbal* duly homologated by any council or by a board of county delegates, subject nevertheless to the approval of the county council in the case of the following article.

532. *Repealed* by R. S. Q., art. 6114.

533. To cause the levelling or cleaning of any ford and the raising, rounding, paving, macadamizing, gravelling or planking of any roads, or part of a road under the direction of the council, at the costs and charges of any one who is liable for the work on such ford or road.

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Nevertheless, if the work of paving, macadamizing, gravelling or planking must be performed by the rate-payers liable for the road-work, or at their expense, the by-law which orders such work can only be passed on petition of the majority of the taxable proprietors so liable.

However, if it concerns the keeping up and maintenance of a road already macadamized, and which shall come under the control of a local or country municipality, the local or county council, as the case may be, without a petition to that effect, may by resolution or by-law order that such road be kept up and maintained as a macadamized road, and that the work of maintaining such road be performed by the rate-payers themselves, as set forth in the resolution or by-law, or at their expense, but under the control of the corporation within the limits whereof the road to be kept up or maintained is situated.

The local or county council cannot thus place a macadamized road at the charges of the rate-payers unless such road is in a good state of repairs, as established by the report of the road inspector or the special officer duly appointed for that purpose under article 376.—52 Vic., ch. 55, s. 1 ; 53 Vic., ch. 63, s. 3.

534. The works ordered on municipal roads by any by-law made in virtue of the preceding article are governed and determined by the by-law which prescribes them, even in cases in which they must be performed by the rate-payers bound to do work on such roads by *procès-verbal* or by the sole provisions of the law.

535. To order that all the local or county municipal roads or bridges for which the rate-payers are liable, and which are situate within the limits of the local municipality, be made, improved and maintained at the costs and charges of the corporation of such local municipality, out of moneys levied by means of direct taxation for such purpose on all the taxable property in the municipality, or substitute the corporation in the place of the rate-payers of such municipality in all obligations to which the latter may be bound in reference to all local and county municipal roads and bridges over water-courses and on roads.

The council may however except and leave in the keeping of the persons who are bound to do work thereon front roads as well as roads or bridges leading exclusively to ferries or toll-bridges.

This article does not apply to those referred to in article 749.

Any by-law made in virtue of this article shall only come into force on the first day of the month of January following its promulgation. —R. S. Q., 6115.

Decisions. — 1. The powers mentioned in art. 535 are conferred upon local councils. County councils cannot impose works of the kind men-

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tioned in said article unless a by-law has been passed by the local council to that effect.

Such powers ought to be exercised in a general manner *e. g.* for all the bridges in the county and not for one in particular. *Corporation County of Verchères* vs *Corporation Village of Varennes*, 14 L. N. 18; 19 S. C. R. 365.

2. The powers conferred by this article may be exercised by local councils. So long as a local council has not passed a by-law under art. 535 placing all the local municipal bridges under the charge of the municipality, the county council cannot legally put the cost of the construction of a bridge upon the municipality or on all the rate-payers.

By law the cost of works on bridges must be borne by proprietors and occupants and not by rate-payers generally.

The powers conferred by this article must be exercised with regard to all municipal bridges, local and county, and a by-law cannot be legally passed for one or a few bridges only. *Corporation Parish of St. Jerusalem* vs *Corporation of Argenteuil*, 6 Rev. de Jur. 139.

3. Municipal Corporations, even in the absence of a by-law, possess the right and duty of keeping roads and other municipal works in good order and may prosecute any ptrson who causes damage of aeterioration to them.

Art. 5536 R. S. Q. which indicates a determination of damages by arbitration does not deprive a plaintiff of his ordinary recourse before the courts. *Pulp Company of Megantic* vs *Village of Agnes*, 7 Q. O. R; Q. B. 339.

4. This article does not confer the power to change any of the provisions of a *procès-verbal* with reference to the cost of construction or reconstruction of municipal works. *Corporation St. Jerusalem d'Argenteuil* vs *Corporation of Argenteuil*, 6 Rev. de Jur. 140. S. C.

5. *Vide infra* art. 699, 4.

536. During the whole time that a by-law passed in virtue of the preceding article, for the purpose of placing such works at the costs and charges of the municipal corporation remains in force, no rate-payer is liable for work on roads or bridges thus placed at the charge of the corporation, and such corporation is substituted in the place and stead of the rate-payers in all the obligations they are under in respect of such works, whether they proceed from *procès-verbaux*, by-laws, or the provisions of the law, under the same penalties as such rate-payers.

537. During the whole time such a by-law continues in force, every part of a *procès-verbal* or of a by-law which determines the work to be done, the nature and quality of the work, and the duties of the road officers, remains in force and is obligatory upon the corporation; the other parts of the *procès-verbal* or of the by-law are suspended, and after the repeal of such by-law, revive and take effect.

Decision. — The powers conferred by art. 535 of the Municipal Code belong to local councils only, and all the works done on municipal bridges in virtue of the law, by-laws, or *procès-verbaux* are to be paid for by proprietors or occupants of lands.

County councils cannot impose the costs of such works upon local

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municipalities in default of a by-law to that effect passed in virtue of art. 535.

If a local corporation makes use of the powers conferred by art. 535, it should do so for all the bridges, local and county, which are in the municipalities and not for one only of such bridges.

Although the Code gives the Circuit Court power to annul any decision, by-law or *procès-verbal* for illegality, nevertheless the Superior Court has a like jurisdiction by reason of its general control over public bodies and corporations. *Corporation of Verchères* vs *Corporation of Varennes*, 19 Supreme Court R. 365; Cassel's Digest 27.

538. The council may, by resolution, define the manner in which the money levied for such work must be expended and applied in the municipality.

It may also, for the execution of such work, make any contracts it thinks proper, in conformity with articles 786 and 787.

539. The road inspector of the division must take care that such work is executed by the corporation in the manner required by the *procès-verbaux* or by the provisions of law which govern the same.

In case of neglect, he must require the corporation to perform such work, and for any default so to do prosecute it in his own name.

540. No by-law made in virtue of article 535 can be repealed except by another by-law voted by two-thirds of the members of the council, which shall only come into force on the first day of the month of January next after its promulgation.

541. To fix the time during which persons bound to keep in repair winter roads under the control of the corporation must take down and keep the fences, mentioned in article 836, levelled, in the manner set forth in such article; to compel such persons to put the fences up again; or to exempt them from taking them down.—53 Vic., ch. 63, s. 4.

542. To place turnpikes on bridges, or on macadamized, paved or planked roads, under the control of the local corporation; and to levy tolls on persons, animals and vehicles passing over such bridges or roads.

The two last paragraphs of article 520 apply also to by-laws made in virtue of the preceding provision.

Decision. — A local municipal council has not the right even by by-law to confer the right of establishing in perpetuity a toll-bridge over a river situated within the limits of the local municipality, nor to forbid fording, nor to impose a penalty for the infraction of such by-law. *Corriveau* vs *Corporation of St. Valier*, 17 R. L. 440.

§ II.—*Public Places*

543. To open, enclose, embellish, improve and maintain, at the costs and charges of the corporation, squares, parks, or public places,

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of a nature to conduce to the health and well-being of the inhabitants of the municipality.

§ III.—*Sidewalks and Sewers*

544. To oblige the proprietors of lands situated on roads belonging to trustees of turnpike roads, on municipal or other roads, or on public places, in the whole municipality or in a part only of the municipality, to make and maintain on such roads or public places, in front of their respective properties, sidewalks of wood, stone or other material fixed upon.

545. To oblige such proprietors to make and maintain sewers in front of their respective properties.

546. To determine the manner in which such sidewalks or sewers must be made or maintained ; and even to construct them at the expense of the corporation, or by apportionment upon a portion of the municipality.—R. S. Q., 6116.

§ IV.—*Miscellaneous Provisions*

547. To cause trees to be planted along roads belonging to trustees of turnpike roads or along municipal or other roads or along municipal sidewalks or public places, either at the expense of the persons bound to maintain such roads or sidewalks, or at the expense of the corporation.

Decision. — Trees planted on the public highway with the authority and consent of the municipal authorities and in accordance with the by-laws, become an accessory of the immoveable property in front of and for the adornment and advantage of which they were planted, and the proprietor of the immoveable has a right of action against a neighbour who causes the destruction of a tree. *L'Huissier et vir* vs *Brosseau et al.*, 20 Q. O. R., 170, S. C., Tachereau, J.

548. To prevent parties from driving or riding faster than an ordinary trot, on roads belonging to trustees of turnpike roads, or on municipal or other roads, or in public places within a radius of half a mile from any church.

To prohibit the stationing of vehicles near toll-gates upon roads under the control of turnpike road trustees.—62 Vic., ch. 56.

548*a*. The powers granted to town and village councils by article 653 are extended to councils of rural municipalities.—53 Vic., ch. 63, s. 5.

SECTION II.—FERRIES

549. To regulate the ferries which are under the direction of the corporation ; and to determine the amount to be paid and the conditions to be observed to obtain any ferry license.

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Note. — No license is required to carry on the vocation of ferryman between the river banks of the St. Lawrence, except between the city of Montreal and the town of Longueuil, between the said city and Laprairie, and between Lachine and Caughnawaga, at the places and limits indicated in the license, by the License Inspector. 41 Vic., ch. 3, s. 56.

Decisions. — 1. Although Trade and Navigation are within the jurisdiction of parliament, the local legislature may nevertheless authorize a municipality to impose an annual tax upon ferry boats plying in its limits. *Longueuil Navigation Co.* vs *City of Montreal*, 9 L. N. 40.

2. *Town of Longueuil* vs *Longueuil Navigation Co.*, 6 L. N. 291.

3. Municipal Corporations may agent exclusive ferry privileges. *Paquet* vs *Corporation of St. Lambert*, 14 Q. L. R. 327.

550. To fix or approve the tolls payable for crossing such ferries either in a boat, steamboat or other craft.

551. No by-law made in virtue of the two preceding articles can fix or approve the tolls payable by certain persons at a less sum than those payable by others, nor give certain persons or localities advantages refused to others.

552. No license issued for a ferry can be granted for a period exceeding ten years.—R. S. Q., 6117 ; 61 Vic., ch. 50, s. 3.

553. If the ferry is under the joint control of two local municipalities, as prescribed by article 861, the council of either municipality may make by-laws respecting such ferry, under articles 549 and 550 ; but such by-laws have no force and effect until they are approved by a resolution of the council of the other municipality, or in default of such resolution, by lieutenant-governor in council.

Section III.—Plan and Division of the Municipality

554. To have maps, plans or surveys of the municipality made.

Maps or plans of the municipality, prepared at the expense of the corporation, must be made by a provincial surveyor, and upon a scale of at least four inches to the mile.

555. To divide the territory of the municipality into as many road divisions as may be deemed expedient, for the superintendence and direction of works on municipal roads and bridges, and any other works under the jurisdiction of the road inspectors.

556. To divide the territory of the municipality into such rural divisions as may be deemed expedient for the purposes of superintendence and direction of works in connection with water-courses, fences, ditches, and all other undertakings under the jurisdiction of rural inspectors.

557. If the municipality is not divided into several rural or road divisions, it forms one division only.

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If, in virtue of the two preceding articles, any changes are made in the division of the municipality while inspectors are in office, the jurisdiction of each must be determined by a resolution of the council ; otherwise such inspectors continue in the exercise of their jurisdiction, as if no changes had been made.

Section IV.—Abuses Prejudicial to Agriculture

558. To prevent the cutting down, damaging or destruction of trees planted or kept for shade or ornament, as well on public roads as on private property.

559. To prevent or cause to be done away with all abuses prejudicial to agriculture, and unprovided for by law.

560. To establish pounds, in which poultry or animals found straying on beaches, flats, roads or public places, or on the property of another than their owner, may be impounded ; to appoint keepers of such pounds, and to determine their fees.

The provisions of this article are binding on every town or village council, and every such council must comply therewith within four months from the time when this code comes into force.

Section V.—Sales of Intoxicating Liquors

§ I.—*Prohibition of the sale of intoxicating liquors*

561. To prohibit the sale of intoxicating liquor in any quantity whatsoever, and the granting of licenses therefor within the limits of the minucipality and on the ferries which are dependencies of such municipality, saving always the provisions of article 56 of the Quebec License Law; but, as respects holders of bottlers' and wholesale liquor licenses mentioned in articlts 48 and 51 of the Quebec License Law, the by-law passed by the municipal council for that purpose only comes into force after it is approved by a majority of the electors entitled to vote at the election of a municipal councillor for the municipality.

This by-law shall remain in force until repealed by another by-law passed and approved in the same manner.—2 Ed. VII, ch. 45, s. 1.

Decisions. — 1. Although the local legislature has not authority to prohibit the safe of intoxicating liquors, it may pass laws for the purposes of collecting revenue, by means of licenses and may impose fines for the sale of such liquors without license. *Edson* vs *Corporation of Hatley*, 27 L. C. J. 312.

Hart vs *Corporation County of Missisquoi*, 12 R. L. 479.

2. The provisions of the Canada Temperance Act were not entirely abrogated by the Municipal Code, 21 L. C. J. 119 ; 12 R. L. 447.

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3. *Covey* and *Corporation County of Brome*, 21 L. C. J. 182; 12 R. L. 478.

4. Saloon-keepers (*hoteliers*) are not obliged to close their houses on Sunday, but merely their bars. *Poitras* vs *City of Quebec*, 9 R. L. 531, 12 R. L. 479.

5. In the same sense as under (1). *Corporation of Three Rivers* vs *Sulte*, 12 R. L. 485.

6. A municipal council has discretionary power to grant or refuse a license. A *mandamus* does not lie to compel it to issue a license. *Smart* vs *Corporation of Hochelaga*, 4 L. N. 255.

7. Canada Temperance Act declared constitutional. *Russel* vs *The Queen*, 6 L. N. 214.

8. *Corporation of Huntingdon* vs *Moir*, 20 R. L. 684.

9. *Lépine* vs *Laurent*, 14 L. N. 369.

561*a*. To prohibit children or apprentices from frequenting taverns, hotels, restaurants and stores, in which intoxicating liquors are sold.—R. S. Q., 6119.

562. Every by-law made in virtue of article 561, whether for prohibiting the sale of intoxicating liquors and the issue of licenses therefor, or for repealing any such prohibitory by-law, only comes into force from the first day of the month of May which follows its promulgation, provided always that before such period an authentic copy thereof has been sent to the collector of provincial revenue of the district.—R. S. Q., 6120.

Decision. — A prohibitory law is without effect unless a copy has been duly sent to the collector of revenue for the district. *Tremblay* vs *Corporation of the village of Pointe-au-Pic.* 13 L. N., 386, S. C.

563. The collector of provincial revenue of the district cannot, so long as such by-law remains in force, issue licenses authorizing the sale of intoxicating liquor in any quantity whatever in any place in the said municipality, subject always to the provisions of article 56 of the Quebec License Law.—2 Ed. VII, ch. 45, s. 2.

564. If a prohibitory by-law has been annulled, the collector of judgment, grant any license, the issue of which the council pro hibited or had the intention of prohibiting by such by-law so annulled.

During such interval, the council which passed the by-law so repealed may make and put in force, according to the ordinary rules, another by-law for the same purpose, and send a copy thereof to the inland revenue, cannot, within two months from the date of such collector of provincial revenue of the district.—R. S. Q., 6122.

565. Licenses granted in contravention to the provisions of a prohibitory by-law, and to those of this code, are null and void within the limits of the municipality where such provisions are in force.

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No license issued to distillers, or brewers, or for the retail of intoxicating liquors on board of any steamer or other vessel, or any other license whatsoever, can in any wise avail to render legal any act done in violation of this section.

566. In any municipality in which a prohibitory by-law made in virtue 561 is in force, no person shall, under a penalty of fifty dollars and imprisonment for three months in default of payment or imprisonment for three months, for each offence, expose or keep for sale, sell, barter or give in exchange for any consideration whatever, any intoxicating liquor in any quantity whatever, unless it be for medicinal purposes or for use in divine worship by the person appointed for the purpose by resolution of the municipal council and licensed therefor under the Quebec License Law, upon the certificate of a physician or upon that of a clergyman and not otherwise; but this article shall not interfere with the rights held by any person under a license from the Dominion Government, nor shall it prevent the manufacture or keeping of intoxicating liquor by wholesale liquor dealers or by bottlers for sale by wholesale. provided such liquor be sold and delivered to persons for sale and delivery by such persons outside the limits of the municipality in which the by-law is in force.—2 Ed. VII, ch. 46, s. 3.

567. All obligations contracted under any form or in any manner whatsoever, for liquor obtained in contravention of the provisions of this section, are held to have been contracted without any consideration, and are null and void, except in so far as a subsequent purchase for value received and in good faith is concerned.

Any payment made on such consideration, either in money, work, or any other articles whatsoever, is also held to have been made without consideration, and to be null and of no effect, and the amount or value of such payment may be recovered from the receiver by the party who made the same, before any court of competent jurisdiction.

§ 11.—*Limitation of the number of licenses for the sale of intoxicating liquors*

568. To limit and determine the number of licenses which the collector of provincial revenue for the district may issue, for the sale of intoxicating liquors in taverns, inns, and other places of public entertainment, or in stores and shops.—R. S. Q., 6124.

569. The articles 562, 565 and 567 apply also to by laws made in conformity with article 568.

570. If the council has passed a prohibitory by-law in virtue of article 561, the by-laws which have been made by the same council in virtue of article 568 are suspended during the whole time such by-law continues in force.

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§ III.—*Miscellaneous provisions*

571. The by-laws made by the council of a rural municipality, in virtue of the provisions of this section, are not subject to appeal to the county council.

572. All municipal by-laws and all provisions in any municipal by-law relating to the sale of intoxicating liquors, in force at the time when this code comes into effect, other than those which may have been made in virtue of articles 561 and 568, are repealed dating from the first day of May following the coming into force of this code.

SECTION VI.—STORAGE OF GUNPOWDER OR OTHER EXPLOSIVE SUBSTANCES

573. To limit the quantity, not exceeding twenty-five pounds of gunpowder or of any other explosive substance, to be kept in any place other than a powder magazine ; and to regulate the manner in which such gunpowder or other explosive substance must be stored.

Note. — All provisions of the "Municipal Code of the Province of Quebec", whereby any municipalities are empowered to regulate the storage of gunpowder, or any other matter, shall apply only, in so far as such storage, or such other matter is not, or shall not, at any time hereafter, be regulated by this law or by any regulations made in virtue thereof. 41 Vic., ch. 3, s. 258.

574. To authorize the construction of buildings in which any quantity greater than twenty-five pounds of gunpowder or other explosive substance must be kept at one time, and also the walls or fences by which such buildings are to be surrounded at a fixed height and distance.

To prescribe the precautions which must be taken by any person whatever entering such buildings, or conveying gunpowder or other explosive substance, to or from the same, within the limits of the municipality.

575. To restrict the storage of gunpowder, or any other explosive substance in quantities of twenty-five pounds or more, to certain limits within the municipality.

576. To provide that any gunpowder or other explosive substance, which is kept in a less quantity than twenty-five pounds, be placed in tin, lead or copper boxes.

577. To cause to be removed or confiscated any gunpowder or explosive substance, kept or conveyed contrary to municipal by-laws.

578. The municipal by-laws respecting the storage and conveyance of gunpowder do not apply to Her Majesty's magazines or ammunition.

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Section VII.—Sale of Bread and Wood

579. To fix the weight and quality of the bread sold or offered for sale in the municipality ; and prescribe the marks which it should bear.

Decision. — A municipal by-law regulating the sale and weight of bread is within the jurisdiction of local councils and there is nothing illegal in a penalty of confiscation as well as a fine. *Corporation of St. Joseph de Lanoraie* vs *Picard.* 6 Rev. de Jur., 547.

580. To regulate the measuring of cord-wood, bark, lumber and shingles offered for sale in the municipality.

581. To authorize the confiscation for the benefit of the corporation or of the poor of the municipality, of every article offered for sale or sold or delivered in contravention of the by-laws made in virtue of the provisions of this section.

Section VIII.—Trade Licenses

582. To compel each of the following persons to take out a license from the corporation for the exercise in the municipality of his trade, occupation or calling, and to prevent the carrying on of such trade, occupation or calling, wihout such license :

1. Every broker or banker, and every wholesale or retail trader, merchant and dealer, residing in the municipality or not, in so far only as relates to the particular business for which they must have such license ;

2. Every carter or common carrier.

No such license can be given for a longer period than twelve months.

The council shall fix by by-law the price for granting any such license in virtue of this article.

The price so fixed may be different for each class of business, trade or craft, provided that it does not exceed twenty dollars in the case set forth in case of paragraph 1, and twelve dollars in the case of paragraph 2.

No municipal corporation shall levy any tax upon any commercial traveller taking orders or selling goods, wares, or merchandise, by sample catalogue or price list or require any such person to procure a license from such municipal corporation, notwithstanding any disposition to the contrary in any statute.—R. S. Q. 4644 ; R. S. Q. 6125 ; 57 Vic., ch. 51, s. 6 ; 60 Vic., ch. 57, s. 4.

Decisions. — 1. A local corporation, upon a demand for the confirmation of a certificate for the sale of intoxicating liquors, cannot exact more than $20 for such confirmation ; but it may exact an additional sum of $20 for a license to carry on business as a trader.

A by-law which requires that each certificate must be accompanied by

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the sum of $125, of which $20 shall be for approving the certificate and $105 for the costs, tax and license to open a shop for the sale of intoxicating liquors will be declared null for the excess over $40. *Beauchemin* vs *Corporation of Nicolet*. 1 Rev. de Juris., 262. C. C., Bourgeois J.

2. A by-law establishing for the same license different prices is null if the valuation roll do not contain evidence to justify such difference in the cost of the license. *Corporation of village Lauzon* vs *Boutin*. C. C., Quebec, 6 June, 1895. Andrews J.

3. A by-law imposing a tax or license upon any person selling intoxicating liquors to the extent of two gallons or a dozen bottles not containing less than a quart at one and the same time, and imposing a fine of $20 for each contravention, was declared illegal. *Corporation of St. Ambroise* vs *Godin*. 5 Rev. de Jur. 321.

4. The power of municipal corporations to require the taking of licenses by persons desiring to exercise certain callings is given with a view to the better maintenance of order therein. This object would be in great measure defeated if under a license to one person, an unlimited number of employees could act. Therefore, under the circumstances of this case, the defendants were justified in exacting that a license should be taken by each party intending to sell especially so when each seller occupied a separate place on a platform erected by the defendants. *Richard* vs *Corporation of Parish of St. Anne de Beaupré*. 14 Q. O. R., 432.

5. The right of a municipal corporation to force persons who do business to take a license is an obligation imposed upon commerce in general but not on those who do an isolated act of trade. *Corporation of St. Ambroise* vs *Godin*. 5 Rev. de Jur., 321.

A by-law imposing a tax of $50 on loery pedlar or seller of beer within the municipality is *ultra vires* of a municipal corporation, unless the right is specially given by statute. Arts. 582 and 582*a* do not authorize a tax but a license. *Hamel* vs *Corporation of the parish of St. Jean Deschaillons*. 20 Q. O. R.; S. C. 301.

582*a*. To require and exact, for the granting of a license, under the previous article, a higher price from persons who have not resided for twelve months in the municipality than from those resident therein, provided such price does not exceed forty dollars for carters or common carriers, and one hundred dollars in other cases.—61 Vic., ch. 56, s. 4.

583. Every carter or common carrier licensed as such in the local municipality in which he is domiciled, may convey any articles taken from such municipality, or any person going therefrom, into any other municipality erected in virtue of any law whatsoever, without paying to such other municipality any municipal license or taxes by reason of such conveyance.

He may also, without being bound to take out any other license or to pay any other tax, convey within the local municipality wherein he is licensed, goods or persons coming from any other municipality erected under any law whatsoever.

In the absence of any by-law under the preceding article, respecting carters or common carriers, the council may grant to any carter

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or common carrier, domiciled within the local municipality, a permit which secures to him the rights conferred by the two preceding provisions.

Decisions. — 1. Legislative authority is essential to justify a municipal council in imposing any tax. In imposing a tax the council ought to specially designate the classes of business which it proposes to tax. It cannot delegate to officials the power of entering upon an assessment roll persons who are not mentioned or included in the scope of a by-law passed by it. *Auer* vs *City of Montreal.* 5 M. L. R., S. C., 117. *McManamy* vs *City of Sherbrooke.* 19 R. L., 423. 14 L. N., 163.

2. The right of imposing a tax must be held at first by the council of the municipality, and the tax is imposed by virtue of said right. The authorization given by the legislature must be express, undeniable and evident.

In imposing a tax, the council must point out specially on what class of business it will impose such tax. Its officers can have no authority to enter on the assessment roll, persons who are not mentioned in the by-law imposing the tax. *Auer* and *City of Montreal.* 5 M. L. R.; S. C., 117; 12 L. N., 302, S. C. *McManamy* and *Corporation of the City of Sherbrooke.* 19 R. L., 423, 14 L. N., 163.

3. A carter residing in the village of K. and having a license from the municipality of the village, is entitled to solicit fares at St. P. en route to K., without being obliged to take a license at St. P.

But he cannot drive the passengers elsewhere than to K. without taking out a license at St. P. *Corporation of St. Pascal* vs *Ward.* 1 Rev. de Jur., 69. Cimon J.

Section IX.—Personal Taxes

584. To levy annually the taxes hereinafter mentioned, upon the following persons :

1. Upon every tenant who pays rent, a sum not exceeding five cents in the dollar upon the amount of his rent ;

2. Upon every male person of twenty-one years of age, residing in the municipality and not otherwise taxed in virtue of this code, a sum not exceeding one dollar.—52 Vic., ch. 54, s. 8.

585. The valuators in office of the municipality are bound to make each year, upon order of the council, in the manner and at the time it prescribes, a return of all the persons taxed by the council in virtue of the preceding article.

Upon the refusal or neglect of the valuators to make such return in the manner and at the time prescribed, the council may have it made by one or more persons whom it appoints for that purpose.

Section X.—Indemnities and Relief

586. To indemnify persons whose property has been destroyed or injured, either wholly or in part, by rioters within the limits of the municipality.

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587. To contribute to the maintenance or support of poor persons residing in the municipality who, from infirmity, old age, or other cause, are unable to earn their own livelihood.

Decision. — This power is discretionary and a municipality cannot be condemned for the non-exercise of it. *Parnell* vs *Municipality of Hatley.* 15 R. L., 339.

588. To relieve any person who has received any wound or contracted any sickness or disease at a fire.

589. To grant rewards, in money or otherwise, to any person who performs a meritorious action at a fire, or who saves or endeavors to save any one from drowning or from other serious accident.

590. To provide for the wants of the family of any person who loses his life at a fire, or while saving or endeavoring to save any one from a serious accident.

591. To establish and maintain poor-houses, houses of refuge, or other establishments for the refuge and relief of the poor and destitute ; to give domiciliary relief to the poor residing within the limits of the municipality ; and to aid charitable institutions established in the municipality or its neighborhood.

Section XI.—Public Nuisances

592. To compel the proprietors or occupants of houses to clean their stables, cattle-sheds, pigsties, outhouses, privies, and the yards connected with such buildings, at such times and in such manner as the council deems expedient.

593. To prevent the making deposits of substances or matters from whence issue noxious gases or odors, such as coal oil, superphosphate of lime in course of preparation, *detritus* or remains of dead animals, the contents of privies and the like ; and to regulate the mode of making such deposits.—R. S. Q., 6127.

594. To prevent any persons from letting off fire-works or fire crakers, discharging fire-arms, lighting fire in the open air, in the streets or roads, or in the neighborhood of a building, grove or fence.

595. To order dogs to be kept muzzled or tied up ; to prevent them from being at large without their masters or other persons to take charge of them ; to impose a tax not exceeding ten dollars on the owners of every dog kept in the municipality ; and to authorize any municipal officer or other person to destroy, by poison or otherwise, all dogs found at large, contrary to municipal regulations.

The penalty imposed for any contravention of the by-laws made

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under this article may be recovered, except in so far as respects the tax, from persons residing ouside the municipality, whose dogs are found in contravention of such by-laws.—R. S. Q. 6128.

596. To regulate the manner in which public or private slaughter houses must be built and kept in repair.

Decision. — The Legislature may authorize a municipal body like the city of Montreal to pass by-laws for the supression of nuisances. *Pillow* vs *the City of Montreal.* 30 L. C. J. 1.

Section XII.—Decency and Good Morals

597. To prevent the desecration of all burial grounds, tombs, graves, monuments, or vaults in which the dead are buried.

598. To suppress every kind of gambling and the existence of gambling-houses and houses of ill-fame, and to authorize any constable to arrest each and every person found therein.—R. S. Q., 6129.

599. To prohibit circuses, theatres or other public exhibitions from being held ; to regulate and permit them to be held upon such conditions as may be deemed fit, and subject them to a duty or tax which must not exceed fifty dollars for each performance.

Every tax imposed by a by-law made in virtue of this article, if it is not paid on demand, may be levied upon all moveables and effects, even upon those which are ordinarily exempt from seizure, found in the possession of any of the persons connected with such circus, theatre or exhibition. under a writ of seizure signed by the mayor or by a justice of the peace, and executory forthwith, without other preliminary formality.

600. To cause the bars of inns, taverns and of other places of public entertainment, to be closed from seven o'clock in the evening on Saturday, until the following Monday at four o'clock in the morning.

601. To prevent, on Sunday and holidays of obligation, horse races and all other horse exercises upon any race course or place whatever.

602. To prevent cock fights, dog fights and every other cruel amusement ; and punish whoever takes part in or is present at them.

603. To prevent profane oaths, and blasphemous and obscene language from being used on roads, squares, or in their vicinity.

604. To prevent the posting up, or the making or writing of indecent placards, paintings, drawings, words or inscriptions, upon houses, walls or fences, and on roads or squares.

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605. To prevent persons from bathing or washing themselves in public waters, or in the open air, close to the public roads or squares, or to regulate the manner in which bathing in such places may be performed.

Decision. — A by-law imposing imprisonment against any one who sells, or offers for sale an immodest or indecent object, even if a work of art, is legal. *City of Montreal* vs *Sharpley*. 9 L. N., 148.

606. To prevent all persons, even those having licenses, from selling or giving intoxicating liquors to any child, apprentice or servant, without the consent of the father, mother, master or legal guardian thereof.

Section XIII.—Public Health

607. To establish boards of health and appoint the members thereof.

608. To take proper measures for securing the inhabitants of the municipality from contagious or pestilential diseases, or for diminishing the danger resulting therefrom.

Section XIII*a*.—Water

608*a*. To provide for the establishment, protection and management of aqueducts, public wells or reservoirs, and to prevent the same from being fouled or wasted.

To grant for a fixed number of years to any company, person or firm of persons, who undertake to construct an aqueduct, public well or reservoir, or who assumes the management thereof, an exclusive privilege of laying pipes to supply water within the limits of the municipality or in any part thereof, and to enter into a contract for such supply of water for one or more years, but for a period not exceeding twenty-five years.—61 Vic., ch. 49, s. 5.

608*b*. For the purposes of the preceding article, articles 637a, 637b, 639 and 640, as well as articles 640a to 640i, respecting expropriations, shall apply.—61 Vic., ch. 49, s. 5.

Section XIV.—Miscellaneous Provisions

609. To erect in the municipality, if there is no district gaol in such municipality, a lock-up house for the incarceration of persons sentenced to a term of imprisonment not exceeding thirty days, in virtue of the provisions of this code or of the municipal by-laws.

610. To encourage, establish and maintain fire companies or firemen for the protection of property.

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611. To limit the number of general or ordinary sessions of the council to not less than four in the year.

612. To oblige the proprietors and occupants of lands to fence the same along municipal or other roads.

Decision. — The law, which imposes upon front proprietors the duty of maintaining roads, does not compel the fencing of such roads. It follows that when this fencing is not imposed by the municipal authority, it is not responsible for damages caused by the lack of fencing. *Croteau* vs *Corporation of St. Christophe of Arthabaska.* 16 Q. O. R., 302.

613. To enclose, at the cost of the corporation, any land recognized as a public cemetery.

614. To establish and maintain public drinking-fount in the municipality.

615. To impose a duty not exceeding fifty dollars on certificates approved by the council to obtain a license for keeping any inn, tavern, temperance hotel, or other house or place of public entertainment.—53 Vic., ch. 63, s. 6.

Note. — Art. 839. R. S. Q. is amended by the addition of the following: "The granting or the refusal of the confirmation of the certificate is in the discretion of the council saving the cases provided for by article 842 and the decision of the council is final. 59 Vic., ch. 14, s. 3.

Decision. — Contradictory decisions may be noted in the following cases : *St. Amour* vs *Corporation of St. François de Sales.* 1 Q. O. R., S. C., 403. *Beard* vs *Corporation of Stanstead*, 8 Q. O. R., S. C., 178.

615*a*. To provide for the construction, protection and administration of aqueducts, public wells or reservoirs, and prevent the public waters from being dirtied or wasted.

To grant for any number of years to any company, person or firm of persons, who shall undertake or have undertaken the construction of an aqueduct, public wells or reservoirs, or who undertake the administration thereof, an exclusive privilege to lay pipes for the supply of water within the limits of the municipality, and to contract for the supply of water for one or more years, but not to exceed twenty-five years.—53 Vic., ch. 64, s. 1.

615*b*. To grant to any company, person or firm of persons who undertake or have undertaken the construction or administration of an aqueduct, public wells or reservoirs, the right of laying pipes for the said aqueduct in the roads or streets, in the ditches or under the sidewalks along the public roads and streets of the municipality and to do such work as may be necessary for the purposes of the said aqueduct.—53 Vic., ch. 64, s. 1.

615*c*. To exempt from municipal taxes, for a period not to exceed twenty-five years, every company, person or firm of persons who

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undertake or have undertaken the construction or administration of an aqueduct, public wells or reservoirs, and not to impose any municipal taxes on account of the said aqueduct, public wells or reservoir during the said period.—53 Vic., ch. 64, s. 1.

CHAPTER FIFTH

BY-LAWS SPECIALLY WITHIN THE JURISDICTION OF TOWN OR VILLAGE COUNCILS

616. Every town or village council may further make, amend and repeal by-laws for any of the objects mentioned in this chapter.

SECTION I—DIVISION OF THE MUNICIPALITY INTO WARDS

617. To divide the municipality into as many wards as is deemed expedient for the purposes of representation in the council; to determine the limits of each ward, and to fix the number of councillors that the municipal electors of each ward may appoint to represent them in the council, so that the councillors of the municipality shall number seven in all, and in such manner that the term of office of each of such councillors shall be three years, save in so far as regards the term of office of the councillors elected at the first general election after the coming into force of the by-law, or appointed by the lieutenant-governor in the absence of an election.

Nevertheless, in village municipalities in which the population exceeds ten thousand souls according to the last general census, or to a special census certified by the mayor or secretary-treasurer, the number of councillors shall be nine, and the quorum shall be five members, when the village has been divided into wards.—53 Vic., ch. 54, s. 9.

Decision. — A village council may divide the municipality into wards, but if the by-law is passed for private purposes and to give the control of affairs to the representatives of a particular district it will be declared null. *Mongenais* vs *Corporation of Rigaud.* 11 Q. O. R., 348.

618. The by-laws made in virtue of the preceding article must determine the manner in which councillors elected at the first general election, or appointed by the lieutenant-governor in the absence of an election, shall go out of office, so that as many councillors for each ward shall be elected or appointed as go out of office.

619. At the time of the general municipal election which follows the coming into force of any by-law made under art. 617, dividing or redividing any municipality into wards, the councillors then in

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office retire therefrom, and seven councillors within the whole municipality must be elected, or appointed by the lieutenant-governor in the absence of an election, and nine in the case provided for by the second paragraph of article 617.—52 Vic., ch. 54, s. 10.

620. In every municipality divided into wards for the purpose of municipal representation, the meeting of the municipal electors of each ward is convened to be held in each of such wards, at the place named in the public notice.

621. If more persons are proposed for election in a ward than there ar councillors to be elected, the presiding officer must proceed to hold a poll for such ward, at the place of meeting itself, in the usual manner.

622. Municipal electors can only vote in the ward in which they are duly qualified electors.

If they are duly qualified as municipal electors in several wards, they may vote in each ward in which they possess such qualification.

623. The council must appoint, to preside at the meeting and in the holding if the polls in the various wards, as many poll clerks as there are wards in the municipality.

623*a*. The council, on a petition to that effect of the proprietors representing more than half the value of the taxable real estate, is bound to divide the municipality into three wards at least, in conformity with articles 617 and 618.

On the refusal or neglect of the council to pass a by-law for that purpose, at one of the two general meetings following the presentation of the petition, the lieutenant-governor in council may make such division, with the same effect as the council.—R. S. Q. 6130; 61 Vic., ch. 49, s. 6.

Section II.—Masters and Servants

624. To regulate the conduct of apprentices, servants, hired persons, day-labourers or journeymen, whether they be of age or minors, towards their masters or mistresses, and the conduct of masters and mistresses towards the former.

In default of by-laws made under this article, regulating the conduct of apprentices, servants, hired persons, day-labourers or journeymen, whether of age or minors, towards their masters or mistresses, and that of masters and mistresses towards the former, in any village or town municipality, the provisions of the law respecting masters and servants in force in rural municipalities are applicable within such village or town municipality.

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SECTION III.—PUBLIC MARKETS

625. To establish, change, abolish or keep in order public markets or places in which public markets are held, or to permit the establishment thereof ; and to regulate the lease of stalls and stands therein, for the sale, or offering for sale, of every description of merchandise or wares, or of any specific commodity.—R. S. Q. 6131.

Decisions. —1. An obligation, by which a rate-payer agrees to pay a municipal corporation a certain sum, if a market is built by the latter at a place designated by the rate-payer is valid. *Corporation of Waterloo* vs *Girard.* 16 L. C. J., 106.

2. A municipal corporation cannot prevent the sale of meat by retail elsewhere than in the market. It may forbid the sale of meat on the market elsewhere than in a stall of such market. C. Q. B., 24 Jan. 1891 reversing judgment of S. C., 20 R. L., 656.

626. To determine and define the duties and powers of all officers employed on and private proprietors of any public market, within the whole extent of the municipality.—R. S. Q. 6132.

627. To prevent any person residing in the municipality from selling or exposing for sale in the municipality, provisions, grain, wares, or other merchandise, elsewhere than upon the markets of the corporation.

Decision. — Municipal corporations cannot in virtue of this article prevent contracts for the sale of goods not exhibited. *McBean* vs *Gosselin* and *Corporation of St. Sauveur.* 18 R. L., 71.

628. To prevent any person residing in the municipality, from cutting up, retailing or weighing any meat, whether beef, mutton, lamb, veal, pork, or salt beef, for the sale thereof, or from exposing the same for sale, or any such markets, elsewhere than in a butcher's stall or in a stall for the sale of salt provisions, provided that nothing contained in this article shall be deemed to prohibit the sale on such markets, by farmers or sportsmen, of any kind of meat and venison not cut up, or in quarters only.

Decisions. — *Mallette et al.* vs *La Cité de Montréal,* 24 L. C. J., 263 ; *Angers pro Regina* vs *La Cité de Montréal.* 24 L. C. J., 259.

629. To prevent or to allow the sale, by residents or non-residents in the municipality, of any kind of fresh or unsalted fish, in such manner and at such places as may be fixed upon, the whole without prejudice to anything contained in the laws relating to fishing and hunting.

630. To regulate the conduct of any person selling or exposing for sale, purchasing or seeking to purchase upon such markets.

631. To impose duties on all persons selling on the roads or on the markets or market places of the corporation, any provisions,

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vegetables, butcher's meats, poultry, grain, hay, straw, firewood, shingles and other articles.

632. To impose duties upon waggons, carts, sleigh, boats, canoes and vehicles of all descriptions in which articles are exposed for sale upon the markets, on the public roads or ways, or upon a beach.

633. To regulate the manner in which such waggons, carts, sleighs, boats, canoes, and vehicles shall be placed in markets or market places, or on the roads.

634. To restrict and make regulations affecting hucksters, or persons who purchase, for the purpose of retailing articles brought into the municipality.

635. To determine whether articles brought into or produced in the municipality, to which no provision of the law applies, must be sold by weight or measure.—R. S. Q. 6133.

636. To authorize the confiscation, for the benefit of the corporation or the poor of the municipality, of all goods, wares, or articles bought or sold or delivered in contravention of the by-laws made in virtue of the provisions of this section.

Section IV.—Water and Light

637. To provide for the establishment, protection and management of aqueducts, public wells or reservoirs, and to prevent the same from being fouled or wasted.

To grant for a fixed number of years to any company, person, or firms of persons, who undertakes to construct an aqueduct, public well or reservoir, or who assumes the management thereof, an exclusive privilege of laying pipes to supply water within the limits of the municipality, and to enter into a contract for such supply of water for one or more years, but for a period not exceeding twenty-five years.—R. S. Q. 6134.

637*a*. To provide, over and above any tax, for the establishment or for the maintenance of aqueducts, public wells or reservoirs, for the payment of a compensation for the water, according to such tariff as it deems meet, by every proprietor, tenant or occupant of any house, shop or like building, whether or not the latter avail themselves of the water, provided always that the council cause a notice to be served on them to the effect that it is prepared to conduct the water, at its own expense, into or near their houses, shops or buildings.

Every by-law to compel proprietors, tenants, or occupants to pay such compensation for water, before having force and effect, must

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be approved by the majority of the electors being proprietors of real estate in the municipality who vote on such by-law, and by the lieutenant-governor in council ; provided always that the number of those who vote in favor of such by-law is at least one-third of the total number of electors being proprietors.

In the case of part of a municipality, a by-law may be passed for that purpose, when required by petition signed by two-thirds of the electors who are proprietors in the territory affected by such by-law without its being necessary to submit the by-law to the approval of the municipal electors.

Every proprietor having one or more tenants, sub-tenants or occupants is liable for the payment of such compensation in the event of his refusing or neglecting to furnish a distinct and separate supply pipe to each such tenant, sub-tenant or occupant.—R. S. Q. 6135 ; 52 Vic., ch. 54, s. 11.

637*b*. To provide for the payment of an annual subsidy to any company, person or firm of persons undertaking the construction of an aqueduct, public well or reservoir, during such period as may be agreed upon. Every by-law passed in virtue of the present article must, before having force and effect, be approved by the majority of the proprietors of real estate in the municipality, who vote on such by-law, and by the lieutenant-governor in council ; provided always that the number of those who vote in favor of such by-law is at least one-third of the total number of proprietors.—R. S. Q. 6135 ; 52 Vic., ch. 54, s. 12.

638. To provide for the lighting of the municipality, in any manner deemed suitable.

Decision. — A corporation is responsible for damages caused by gas, the use of which it has authorized. *City of Sorel* vs *Vincent*. 17 R. L., 220. Q. B.

639. To compel the owners or occupants of lands situated as well in the neighboring municipalities, not more than thirty miles distant, to permit and allow all works undertaken for the purpose of providing the inhabitants of the municipality with water or light, to be carried on, and the taking possession, for the purpose of supplying and feeding such water-works and other hydraulic constructions, of the lakes, non-navigables rivers, ponds, springs and water-courses having their source or flowing on private property ; without, however, prejudicing the rights of the riparian proprietors to make use thereof, as well under the common law, as under the law respecting the improvement of water-courses, subject to the indemnity to be determined by the arbitration to that effect made under articles 640*a*, 640*b*, 640*c*, 640*d*, 640*e*, 640*f*, 640*g*, and 640*h*.—R. S. Q. 6136.

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640. To transfer its rights and powers, respecting the supplying of water, to any company, person or firm of persons who wishes to take charge thereof, provided that such company, person or firm does not exact, for the supplying of the water, higher rates than those fixed and approved of by by-laws of the council ; and the council may take stock in such company, or lend money to such company, person or firm of persons.

Every by-law passed under this article is subject to the provisions of article 482.—R. S. Q. 6137.

640*a*. If the municipal council, or the company, person or firm of persons in the rights of the council, cannot agree with the proprietors or owners of the lands upon the amount of the indemnity, the expropriation is proceeded with in the manner mentioned in the following articles.—R. S. Q. 6138.

640*b*. A disinterested person is appointed by the municipality or company, person or firm of persons in the rights of the municipality, and another is appointed by the proprietors or the possessor of the land damaged, which two persons appoint a third, and all three shall act as arbitrators in the matter in dispute between the parties. —R. S. Q. 6138.

640*c*. The delay to appoint such arbitrator is eight days, counting from the service of a notice given for such purpose by one of the parties to the other.—R. S. Q. 6138.

640*d*. If within the delay of eight days, one of the parties makes default to appoint his arbitrator, such arbitrator may be appointed by a judge of the superior court in the district in which the land to be expropriated is situated, upon petition presented in chambers on the eighth day counting from the service of a notice to that effect upon the party in default.—R. S. Q. 6138.

640*e*. The delay to appoint the third arbitrator is three days counting from the acceptance of the arbitrators.—R. S Q. 6138.

640*f*. If, within such three days, the arbitrators make default to appoint such third arbitrator, he may be appointed by any judge of the superior court in the district in which the land to be expropriated is situated, upon a petition presented in chambers, on the eighth day after notice to that effect, given by either of the parties interested to the other.—R. S. Q. 6138.

640*g*. The service of the notice and of the petition must be either personal or at the domicile of the parties interested, by a bailiff of the superior court ; and if the party interested is absent the bailiff

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intrusted with making such service must in his return certify such absence.

Notice must be given to the absent party according to article 68 of the code of civil procedure, and such notice is considered sufficient for all the purposes of the expropriation.

All other notices, petitions and proceedings that require to be served upon the absent party for the purposes of the expropriation, may be served in the office of the prothonotary of the superior court for the district in which the property to be expropriated is situated, which is held to be the domicile of the absent party for the purposes of the expropriation.—R. S. Q. 6138.

640*h*. The award rendered by the arbitrators in the cases provided for by the preceding articles is final and without appeal.—R. S. Q. 6138.

640*i*. In village municipalities in which the population exceeds ten thousand souls according to the last general census, or to a special census certified by the mayor or secretary-treasurer, the taxes destined to the payment of interest on municipal debentures issued for the purpose of providing for the cost of constructing water-works or under-ground drains, as well as those destined to the payment of the sinking fund or to the redemption of such bonds, may be levied upon the annual value of the taxable real estate, liable for the payment of the sinking fund or the redemption of such debentures, and shall be levied according to the last valuation roll.—52 Vic., ch. 54, s. 13.

Section V.—Public Nuisances

641. To cause the removal, at the expense of the owners or occupants, of any door-steps, stairs, porches, railings, balconies, buildings or other erections which project beyond the line of the public road, or obstruct public communication, and to compel the latter to require the running of the line of the public highway before building.—R. S. Q. 6139.

642. To cause to be pulled down and removed all walls, chimneys or buildings in a state of delapidation or decay, or threatening to fall down; and to fix at what time, by what means, and at whose expense the same shall be so pulled down or removed.

643. To prevent the throwing into any public road or way, lane or passage, any sweepings, filth, dirty water, or other ordure; and order the removal thereof at the expense of the corporation or of those who caused such nuisances.

644. To compel the owner or occupant of a piece of land border-

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ing upon a road or square, to remove the snow, ice, or filth, from the sidewalk or road fronting such land, even in cases where the road work is at the costs and charges of the corporation ; to remove the snow and ice from the roofs of houses or other buildings erected on the public roads ; and order the road inspector to cause such nuisances to be removed, at the expense of the owner or occupant who refuses or neglects so to do.

645. To obviate and prevent the obstruction of the sidewalks, roads and squares.

646. To regulate the construction of privies and cellars, and the manner in which they are drained.

647. To prevent the erection of wooden buildings or fences within the municipality, or in any specified part of it.

648. To prevent the erection in the municipality, of manufactories or machinery propelled by steam ; to permit them upon certain conditions, or to determine the places in the municipality where they may be erected.

649. To prevent or regulate the construction of slaughter-houses, gas-works, tanneries, candle or soap factories, distilleries, and other manufactories which may become public nuisances ; and to cause the removal of slaughter-houses then existing in the municipality.

Decision. — A municipal corporation has no right to cause the suppression by injunction or otherwise of a nuisance caused by an industrial establishment in its limits, failing any violation of the civil law. Its recourse in such case is under the Criminal Code or proceedings in the name of the attorney general. Its powers consist in passing by-laws and causing them to be executed. *Corporation of the village of de Lorimier* vs *Beaudoin.* 9 Q. O. R., S. C., 222.

650. To prevent any person from carrying, depositing or leaving in the municipality, or in the waters which border upon it, dead bodies or other deleterious substances.

651. To oblige the owners or occupants of all groceries, cellars, manufactories, tanneries, drains or other unhealthy and unwholesome places, to keep them clean and render them wholesome.

652. To compel all owners or occupants of lands on which there are stagnant waters, to drain or fill them up ; and, in case of neglect or refusal on the part of such persons, to authorize the officers of the corporation to undertake such work at their expense.

Section VI.—Miscellaneous Provisions

653. To prescribe the mode of placing stoves, grates and stove pipes, and making chimneys, furnaces and ovens of every description, and to regulate their use.

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654. To oblige owners or occupants of houses or other buildings, to provide themselves with a fixed number of fire-buckets, or with any other apparatus suitable for preventing accidents by fire, and to have ladders from the grounds to the roofs of their houses, and thence to the ridge of the roof. To order that such houses or buildings, be not covered with shingles, unless a coat of cement or adhesive mortar, at least one-half inch in thickness, be placed upon the boarded roof, underneath the shingles, and between both, under a penalty for each contravention of a fine, the amount whereof is fixed in the by-law.—R. S. Q. 6140.

655. To prevent any person from entering any cattle shed, stable, pig-sty, barn or outhouse with a light not enclosed in a lantern, or with a lighted cigar or pipe, or from carrying into the same any fire without proper precaution.

656. To prevent any person from lighting or having any fire in any out-house, pig-sty, barn, shed or other building, unless such fire be placed in a chimney or in a metal stove connecting with a chimney.—R. S. Q. 6141.

657. To prevent any person from carrying fire in or through any public road or way, or through any garden, yard or field, unless such fire be contained in a metal vessel.

658. To compel proprietors or occupants of barns, hay-lofts or other buildings, containing combustible or inflammable materials, to keep the doors thereof closed.

659. To compel the owners or occupants of houses to have their chimneys swept; to determine the mode in which sweeping must be done, and the number of times such chimneys must be swept within a given period; and to appoint the chimney-sweeps to be employed.

660. To prevent the sale of gunpowder or other explosive substance after sunset.

661. To prevent or regulate the construction of furnaces for making charcoal.

662. To determine the manner in which ashes or quicklime must be kept or stored.

663. To provide for the purchase of engines, apparatus or articles suitable for the prevention of accidents by fire, and for arresting the progress of fires.

664. To prevent thefts and depredations at fire.

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665. To authorize certain persons to blow up, destroy and pull down as many buildings as may be deemed necessary to arrest the progress of a fire, saving recourse for any damages and indemnities payable by the corporation to the owners of such buildings.

In the absence of any by-law made in virtue of this article, the mayor may, in the course of a fire, exercise this power by giving a special authorization.

The corporation can always, even in the absence of any by-laws or special authorization by the mayor to that effect, award and pay an indemnity to any person who has suffered loss and damage by the demolition of his buildings during a fire.

666. To regulate the conduct of every person present at a fire.

667. To determine the level and height of the side-walks, safety and division walls upon the public road or way, whenever the council deems it expedient for the convenience, safety and benefit of the inhabitants of the municipality.

668. To maintain, arm, lodge and clothe a police force, in the municipality ; and to fix the duties of the members of such force.—R. S. Q. 2865, et seq.

Decisions. — 1. The Dominion Act, 31 Vic., ch. 40, s. 27, provides that the active militia may be called upon to aid the civil authorities in case of tumult and authorizes two justices of the peace to initiate the appeal. The payment of the militia cannot be refused on the ground that they were needlessly called upon. *Mackay* vs *City of Montreal*. 20 L. C. J., 221.

2. A municipal corporation is responsible in damages for assaults committed by its police officers. Such responsibility is judged according to the civil law. *Corporation of Montreal* vs *Doolan*. 18 L. C. J., 124. *Latreille* and *Town of St. Jean-Baptiste*, 20 R. L., 351. *Viau* vs *City of Montreal*. 17 R. L., 511. *Pratt* vs *Charbonneau*, 14 L. N., 202 ; 19 R. L., 250. *Laviolette* vs *Thomas*, 31 L. C. J., 197. *Noel* vs *City of Montreal*, 19 R. L., 704.

3. But not if the police officers are named by commissioners under a special law, even though such officers are paid by the corporation. *City of Quebec* vs *Olivier*. 15 R. L., 319., Q. B. ; 14 Q. L. R., 154.

669. To cause the houses and lots situated on the roads in the municipality to be numbered, and to give names to the streets and roads, and to alter the same.—52 Vic., ch. 54, s. 14.

670. To have the streets and sidewalks swept, watered and kept in good order ; and to have the snow removed therefrom at the expense of the corporation.

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CHAPTER SIXTH

FORMALITIES TO BE OBSERVED BEFORE MUNICIPAL BY-LAWS ARE CARRIED INTO EFFECT OR PUT INTO FORCE

SECTION I.—APPROVAL BY MUNICIPAL ELECTORS

671. Whenever it is prescribed that a by-law must be approved of by the municipal electors before coming into force and effect, the council who has passed such by-law orders by resolution that a public meeting of the electors of the municipality be held for the purpose of approving or disapproving such by-law, and that a poll be held for such object.

672. If the by-law has been passed by the county council, it is submitted for the approval of the municipal electors of the county, in each local municipality of the county ; and the meeting is convened by the warden, for the same day, at ten o'clock in the forenoon, in each of such local municipalities.

673. The day for which the meeting of municipal electors is convened must not be less than twenty days or more than thirty days after the passing of the by-law by the council.

674. The meeting of the municipal electors is held at the place where the local council holds its sitting.

675. A certified copy of the by-law submitted for the approval of the municipal electors must be posted up, at least fifteen days before the holding of the meeting, in the places where municipal by-laws are ordinarily published, and it must be inserted twice at full length in one or more newspapers before such meeting, subject to the application of articles 243 and 244.—R. S. Q. 6142.

676. A certificate of the secretary-treasurer, certifying that the copy of the by-law published is a true copy of the by-law passed by the council, and also the notice convening the municipal electors, must be posted up and published at the same time and in the same manner as the copy of the by-law.

677. The meeting of the electors is presided over, in each local municipality, by the mayor, or in his absence, by a person chosen by the meeting.

678. The secretary-treasurer of the local council is bound to be present at such meeting, with the original or a certified copy of the valuation roll in force ; and he acts at such meeting as poll clerk.

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678*a*. The presiding officer, after opening the meeting and reading the by-law, is bound to open the poll without delay, and to proceed to the registration of the votes.—R. S. Q. 6143.

679. The person presiding at the meeting has no right to vote thereat.

680. Articles 300, 301, 306, 315, 316, 317, 318, 319, 322, 323, and 324, apply also, *mutatis mutandis*, to a meeting convened for the approval or disapproval of a municipal by-law, to the person who presides at such meeting, or to the poll which is held thereat.

681. Every municipal elector, except in the case of article 497, is qualified to vote for or against the by-law submitted. The electors give their vote "yea" or "nay"; the word "yea" meaning that they approve of the by-law, and the word "nay" that they disapprove of it.

The poll books are kept in the same manner as those used at an election of municipal councillors, except in so far as the contrary is prescribed in this section.

682. At the close of the poll, the presiding officer counts the "yeas" and "nays", and ascertains and certifies according to the poll book the number of votes given against the by-law in the municipality. The certificate must also be signed by the poll clerk.

683. The poll books and the certificate are deposited in the office of the council which passed the by-law by the presiding officer at the meeting, within forty-eight hours after the close of the poll.

684. If the by-law has been passed by the county council, the warden, so soon as the poll books and certificate have been deposited at the office of the council, ascertains by each certificate the total number of votes given for or against the by-law.

685. In the case of an equal division of votes, the head of the council which has passed the by-law gives his vote.

686. The approval or disapproval of the municipal electors, as the case may be, must be established without delay by a certificate signed by the head and by the secretary-treasurer of the council which passed the by-law. Such certificate is submitted to the council at one of its next sessions.

If the council desires to examine the poll books, they must be laid before it at once.

SECTION II.—APPROVAL OF THE LIEUTENANT-GOVERNOR IN COUNCIL

687. Whenever it is prescribed that a municipal by-law must be approved of by the lieutenant-governor in council before having

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force and effect, the secretary-treasurer of the council, after the passing of such by-law, or after it has been approved of by the municipal electors, if it has been necessary to submit it to them, forwards an authentic copy of the by-law to the provincial secretary, together with a certified copy of all documents calculated to convey information to the lieutenant-governor upon the fulfilment of the provisions of the law, and the utility of the passing of such by-law.

688. The lieutenant-governor may exact from the council which has passed such by-law, all the documents and information he deems necessary for assuring himself of the utility of the by-law or of any of its provisions.

689. The lieutenant-governor in council must not approve of a municipal by-law until after proof has been made to his satisfaction that the formalities required for the passing of such by-law have been observed.

690. A by-law which, before having force and effect, must be submitted to the municipal electors, and to the lieutenant-governor in council for approval must, in the first instance, be submitted to the municipal electors, and afterwards to the lieutenant-governor in council, if it has been approved by them.

Section III.—Promulgation of Municipal By-Laws

691. Municipal by-laws are promulgated on the day of their publication in virtue of the following article.

692. Municipal by-laws are published within fifteen days after the passing thereof, or of their final approval in cases where they may have been submitted for approval to the municipal electors or to the lieutenant-governor in council, by a public notice mentioning the object of the by-law, and the date of the passing thereof.

Such notice is given under the hand of the secretary-treasurer, and is published in the ordinary manner.

If the by-law is approved of by the municipal electors, or by the lieutenant-governor in council, or by any other council, when such approval is required, the notice of publication must also mention that each of these formalities has been observed, and the dates upon which they were complied with.

693. Every municipal by-law must be read at any place determined on by the local council, under article 234, if such place has been fixed, on two Sundays within thirty days following the day on which it was published in virtue of the preceding article, after divine service, if divine service has been performed.

If it is a by-law of a county council, and if the notice of publica-

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tion has been addressed under article 235 to the secretary-treasurer of any local municipality, such officer must provide for the by-law being read in the manner required by the preceding provision.

The neglect to read such by-law in conformity with this article does not prevent such by-law from coming into force, but it renders the person whose duty it is to read the same liable to a penalty of not less than ten nor more than twenty dollars.

694. Any council may moreover publish its by-laws in one or more newspapers.

695. Any by-law passed by a council of a rural municipality, and amended or confirmed in appeal by the county council, must be published by the secretary-treasurer of the local council, within the fifteen days after the transmission, in virtue of article 934, of the decision of the county council, or of the certificate of the secretary-treasurer, if that council gave no decision, even though such by-law may have been published before the appeal to the county council.

696. A municipal by-law may always be published after the delay prescribed by articles 692 and 695, but only by order of the council.

697. The promulgation of every municipal by-law is considered to have been sufficiently made until the contrary is alleged, at the expiration of the delay prescribed for the publication of such by-law.

Decision. — In an action for the recovery of the cost of works done on a water-course (M. C. 401), the Defendant objecting that no *procès-verbal* exists as against his properties, nor any apportionment act against them on account of those works; plaintiff will be bound to fyle the *procès-verbal.* and prove that notices were given before it was drawn up. For want of such proof it will be presumed that those notices have not been given, and the action will be dismissed. R. S. C. *Corporation of townships of Wendover and Simpson* vs *Tourville.* 15 R. L. 47.

CHAPTER SEVENTH

ANNULMENT OF MUNICIPAL BY-LAWS

698. Any municipal elector in his own name may by a petition presented to the magistrate's court or to the circuit court of the county or district, demand and obtain, on the ground of illegality, the annulment of any municipal by-law, with costs against the corporation.

Decisions. — 1. A by-law that has not yet been promulgated will not be declared null. *Morin* vs *Corporation of Township of Garthby.* 5 L. N. 272.

2. Articles 100 and 698 do not take away the jurisdiction of the Superior Court. Negligence in promulgating a by-law does not deprive

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interested persons of the right to have such by-law declared null. *Corporation of Arthabaska* vs *Patoine*. 9 L. N., 82.

3. Payment of assessment to avoid seizure is not an acquiescement and does not deprive one of his right to contest the roll of assessment *Bisson* vs *Mayor, etc., of Montreal*. 23 L. C. J., 306.

4. A rate-payer may attack a bylaw in his own name; but if such by-law requires to be ratified by the electors, he must wait until such ratification takes place. *Molson* vs *Mayor, etc., of Montreal*. ~~22~~ 23 L. C. J., 169.

5. The plaintiff must show that he will suffer injustice by the operation of the by-law. *Simpson* vs *Corporation St. Malachi of Ormstown*, 29 L. C. J. 36.

6. Only a municipal elector may take these proceedings and ought to allege that he is such. *Thérien* vs *Corporation of Mascouche*, 9 L. N. 20.

7. A number of proprietors may unite in an action to annul a by-law. *Barrette* vs *Parish of St. Bartholemew*, 2 Q. O. R., 585.

8. A direct action, not an incidental proceeding, is essential. *Parent* vs *Parish of St. Sauveur*, 2 Q. L. R. 258; *Village of Ste. Rose* vs *Dubois*, 19 R. L. 33.

9. A by-law passed under 37 Vic., ch. 5, s. 2, cannot be attacked in virtue of art. 698. *Martin* vs *County of Argenteuil*, 2 April 1884.

10. The Superior Court cannot scrutinize the exercise of discretion by a municipal council, but can only enquire as to the legality of its acts. *Barrette* vs *Parish St. Bartholemew*. 4 Q. O. R., Q. B. 92; *Parish of Ste. Louise* vs *Chouinard*, 5 Q. O. R., Q. B. 362.

11. The revision of a valuation can only be demanded by a proprietor in virtue of art. 4376 R. S. Q. and no appeal lies to the Superior Court from the evaluation decided upon by municipal councils. *Cleve et vir* vs *Corporation of Richmond*, 7 Q. O. R., S. C. 37.

12. A municipal corporation cannot be a petitioner under Arts. 100 and 698. *Corporation of Granby* vs *Corporation of Shefford*, 1 Q. O. R., S. C. 114.

13. The quashing of a municipal by-law must be demanded within three months of its coming into force. *Prévost* vs *Corporation of St. Jerome*, 5 Rev. de Jur. 395.

14. A resolution passed by a municipal council composed of six members of whom two had just been replaced by the election of others is null. *Laroche* vs *Corporation Ste. Emilie de Lotbinière*, 7 Q. O. R., 352, C. C.

15. The municipal corporation, defendant, cannot by reason of the extent of plaintiff's land which already has a front road less than thirty arpents distant, contribute to the opening and maintenance of a road which is of no utility to these arpents but of benefit to other lands; and a by-law passed by the council of the defendant thus operating a grave injustice to plaintiff will be annulled by ordinary action before the Superior Court.

The fact that plaintiff first appealed to the county council without success does not deprive him of his right of action.

The recourse by petition to quash given by the M. C. does not exclude such right. *Therriault* vs *Corporation Parish of St. Alexander*, 20 Q. O. R., 45, S. C. Cimon, J.

699. The annulment of part only of a by-law may be demanded and obtained in the same way.

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Decision. — A by-law may be declared inoperative as regards the construction of works already provided for, and valid as regards the tax which it imposes for the collection of the cost of such works. *Archambault* vs *Corporation of St. François d'Assise de la Longue-Pointe*, 3 Q. O. R., S. C. 100.

700. The petition must set forth in a clear and precise manner the reasons alleged in support of the demand, and must be accompanied by a certified copy of the by-law impugned, if such copy could be obtained.

If such copy could not be obtained, the court, upon application being made to it to that effect, orders the secretary-treasurer of the council, or any other person in whose custody such by-law may be to produce such copy ; and such person, in the same manner as the secretary-treasurer, is for this purpose deemed to be an officer of the court which gives such order.

701. Such petition must be served at the office of the council which passed the by-law, eight days at least before it is presented to the court.

702. The rules prescribed by articles, 352, 353, 354, 355, 356, 358 and 360 apply also *mutatis mutandis* to the petition presented in virtue of the provisions of this chapter.

703. The court may, by its judgment annul such by-law, in whole or in part, order the service of such judgment at the office of the council interested, and cause the same to be published either in the manner prescribed for the publication of orders of the council or in one or more newspapers.

704. Any by-law or part of a by-law so annulled ceases to be in force from the date of the judgment.

705. Nevertheless, every tax, contribution, penalty, or obligation imposed by any by-law subject to be annulled, and payable before such by-law was set aside, is exigible, notwithstanding the setting aside of such by-law, if the petition on which such by-law was set aside was not presented to the court within three months from the time such by-law came into force.

Every loan contracted and every debenture issued in virtue of a by-law liable to be set aside, is valid; and the taxes imposed to pay such loan or such debentures are due and exigible, if the petition praying that such by-law be set aside was presented to the court after the three months which follow the coming into force of such by-law.

Decision. — 1. If instead of proceeding by by-law a council proceeds by simple resolution an illegality is committed ; but if this illegality is not invoked within the delay of three months, the taxes resulting from

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such resolution will be exigible. *Corporation of the village of Ste. Geneviève* vs *Charant*. 33 L. C. J., 116.

2. This article does not apply when a by-law is in direct violation of law. In such an event, taxes paid may be recovered. *Corporation of Rimouski* vs *Ringuet*. 1 L. N., 115.

3. The period mentioned in article 705 as amended by 39 Vic., ch. 29, s. 2, only applies to the cases mentioned in article 100 and in chapter 7, title 1 of book 2 of this Code. *O'Shaughnessy* vs *Corporation of Ste. Clothilde de Horton*. 11 Q. L. R., 152, S. C.

706. The corporation, the council whereof passed the by-law so annulled, is alone responsible for the damages and rights of action proceeding from the putting into force of such by-law or of such part of a by-law.

707. Such responsibility is nevertheless incurred only in the case where the petition for annulment has been served at the office of the council within thirty days after the by-law has come into force. —R. S. Q. 6144.

Decisions. —A municipal councillor whose election has been annulled owing to an illegal resolution of a council so electing him may recover the costs to which he has been condemned in consequence. *Bourbonnais* vs. *Carrière*, 4 Q. O. R., S. C. 41 ; *Filiatrault* vs. *Corp. Coteau Landing*, 7 Q. O. R. S. C. 404.

2. But see *Thibaudeau* vs. *Corp. Aubert Gallion*, 4 Q. O. R., S. C. 485 for a decision in a contrary sense.

3. Held that the annulment of a by-law may be demanded any time after its adoption, even if it has not been approved by the electors, if the council, notwithstanding such non-approval, submit it to the Lieutenant Governor for his approval. *Bouliane* vs *Corporation Village of Pointe-au-Pic*, 5 Rev. de Jur. 84. (See also art. 479).

4. It is not necessary to proceed by direct action against a by-law, *procès-verbal*, or resolution of a municipal corporation ; the illegality of such may be pleaded in defence to an action brought. *Corporation of Megantic* vs *Corporation of Nelson*, 6 Rev. de Jur. 37.

The Plaintiff having taken over a bridge and road as belonging to the county are obliged to maintain the same, but cannot as a county corporation impose upon two local corporations the cost of a reconstruction of the bridge in iron, without indicating the lands liable therefor.

A by-law for the maintenance of a wooden bridge cannot without other formalities, serve for an iron bridge to take the place of the wooden one. *Ibid.*

5. The quashing of a municipal by-law for illegality may be demanded before the Superior Court, the Circuit Court or a judge of the Superior Court, within three months of its coming into force, but not afterwards. *Prévost* vs *Corporation of St. Jerome*, 5 Rev. de Jur. 395, Taschereau, J.

6. A by-law passed by the council was rejected by the majority of the electors as to value. It was, notwithstanding, submitted to the Lieutenant Governor for his approval. Held : that the petitioner was justified in asking for its annulment. *Bouliane* vs *Corporation of Pointe-au-Pic*, 5 Rev. de Jur. 84.

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7. If a resolution passed by a council is attacked in virtue of the provisions of the municipal code the same must be observed and proceedings begun within the thirty days; but this delay does not apply to an action under the common law. *Roy* vs *Corporation of St. Gervais*, 17 Q. O. R., 377, S. C.

708. The right of demanding the quashing of any by-law, whether subject or not to the approval of the lieutenant-governor in council, may be exercised immediately after it has been passed by the council, and is prescribed by thirty days from the date of the coming into force of such by-law.—57 Vic., ch. 52, s. 1.

Decision. — This article does not apply to the recourse by *Quo Warranto* for the quashing of a municipal election. *Bourbonnais* vs *Filiatrault*, 4 Q. O. R., S. C. 13.

TITLE SECOND

VALUATION OF TAXABLE PROPERTY

CHAPTER FIRST

WHAT PROPERTY IS TAXABLE

709. All lands or real estate situated in a local municipality, except those mentioned in article 712, are taxable property.

Decision. — The limits of the town of St. John extending to the middle of the Richelieu river, it may levy taxes on that portion of a railway bridge contained within such limits. *Central Vermont Ry* vs *Town of St. John*, 30 L. C. J. 122; *Town of Longueuil* vs *L. Navigation Co.* 6 L. N. 291.

710. The following property is taxable in every local municipality in which it is possessed:

1. The yearly salary or income derived from the office of every judge or other civil servant appointed by the federal or provincial government;

2. The annual professional income of every advocate, notary, pilot, physician, surgeon, dentist, civil engineer, or provincial land surveyor;

3. The annual salary of all other persons engaged in another's service, and whose salary exceeds four hundred dollars per annum.

711. If a rate-payer, who possesses property declared to be taxable under the preceding article, has his domicile in one local municipality, and his place of business, from which is derived such taxable

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property, in another, such property is only taxable in the local municipality in which is situated his place of business.

712. The following property is not taxable :

1. Property belonging to His Majesty, or held in trust for his use ; property owned or occupied by the corporation of the municipality in which it is situated, and the buildings in which are held the circuit courts and registry offices ;

2. Property owned or occupied by the federal or provincial government ;

3. Property belonging to *Fabriques*, or to religious, charitable, or educational institutions or corporations, or occupied by such *Fabriques*, institutions or corporations for the ends for which they were established, and not possessed solely by them to derive a revenue therefrom ;

4. Burial-grounds, bishops' palaces, parsonage houses, and their dependencies ;

5. All property belonging to iron and wooden railway companies to which a grant from the provincial government has or may be made, for the period of twenty years from the date of the first payment on account of the grant ;

6. All educational institutions receiving no grant from the corporation or municipality in which they are situated, and the land on which they are erected and its dependencies ;

7. All property belonging to or used specially for exhibition purposes by agricultural and horticultural societies.—R. S. Q. 6146.

Decisions. — 1. A certain property was given to the Congregational Sisters a century ago for educational purposes. The sisters built there a large establishment as a sort of infirmary to which no school was attached. Held nevertheless that it was exempt from taxation. *Corporation Village of Verdun* vs. *Congregational Sisters.* 1 D. C. A., 163. 4 L. N., 115.

2. *School Commissioners of St. Roch* vs *Seminary of Quebec*, 10 Q. L. R. 335., 8 L. N. 83.

3. A dwelling house attached to Morrin College used by the professors of the college is exempt in virtue of 29 Vic., ch. 57, s. 25. *City of Quebec* vs *Morrin College*, 5 L. N. 144.

4. Government property sold to a private individual after the making of the civic assessment roll is not subject to taxation for the remainder of the current year. *Hogan* vs *City of Montreal*, 29 L. C. J. 29 ; 7 L. N. 378.

5. Churches and parsonages are exempt from special taxes for drains, sidewalks, etc. *City of Montreal* vs. *Rector, etc., Christ church Cathedral.* 4 M. L. R., 13 ; *Seminary of St. Sulpice* vs. *City of Montreal.* 33 L. C. J. 197.

6. Acquisition subsequent to the imposition of a tax by an educational or religious community does not release the property from liability for such tax. *Community of Sisters* vs *Corporation of Waterloo*, 31 L. C. J., 279.

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7. Taxes paid in error of law may be recovered. *Haight* vs *City of Montreal*, 3 M. L. R. 65; *Wylie* vs *City of Montreal*. Supreme Court; 7 L. N. 26.

8. An asylum for the Insane supported by voluntary contributions is a charitable institution and exempt from taxation. *Corporation of Verdun* vs *Protestant Asylum for the Insane*. 15 L. N. 58.

9. A property exploited for agricultural purposes, by an educational institution is subject to taxation. *Commissioners of St. Gabriel* vs *Congregational Sisters*. 12 Sup. Court R.; *Les commissaires d'école de Varennes* vs *Théberge*, 18 R. L. 61.

10. *Corporation of Frelighsburg* vs *Davidson*, 2 Q. O. R., (S. C.) 371.

11. *Brisebois* vs *Corporation Roxton Falls*, 3 Rev. de Jur. 26.

12. *Corporation of Limoilou* and *Seminary of Quebec*, 7 Q. O. R. 44.

13. The property of the Crown is exempt even although entered upon the assessment roll in the name of the occupant without protest on his part. *Parsons* vs. *Mayor, etc., of Sorel*. 15 R. L., 417.

713. The occupants of property mentioned in paragraphs 3, 4 and 5 of the preceding article are nevertheless liable for works of repair upon the front roads situated opposite such property, in the local municipalities wherein such roads are not at the costs and charges of the corporation.

They are also liable for work on water-courses, clearances, boundary ditches and fences belonging to such lands.

714. Crown lands occupied, whether under or without location tickets, are deemed to be taxable property; but the municipal taxes for which they are liable cannot in any case be recovered from the crown.

715. The provincial registrar shall transmit, during the course of the month of January in each year, a list of the public lands for which letters-patent have been issued during the preceding year, to the registrars of the registration divisions and to the secretary-treasurers of the county municipalities in which such letters-patent have been issued.—R. S. Q. 6147.

CHAPTER SECOND

MAKING OF THE VALUATION ROLL

716. In the months of June and July, triennially, the valuators of every local municipality must draw up, either personally or by any other person employed by them, a valuation roll based upon the real value of the property, in which are set forth with care and correctness all the particulars required by the provisions of this title.

Nevertheless, in the county of Gaspé the valuation roll must be

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drawn up in the months of February and March.—R. S. Q. 6148 ; 60 Vic., ch. 57, s. 5.

Decision. — A valuation roll made before the expiration of the three years is illegal, and the collection of taxes thereunder may be stopped by writ of prohibition. *Beauvais* vs. *Côté and Corporation Hochelaga.* 12 R. L. 31.

717. In every local municipality where there is no valuation roll, or in which the valuation roll in force has been annulled, the valuators are bound to make one upon an order of the council, within the delay determined by the latter, even if it should not be the year during which valuation rolls are made in virtue of the preceding article.

The valuation roll so made is subject to the examination of the county council, and remains in force until the month of July of the year in which valuation rolls are made in virtue of the preceding article, and subsequently until the coming into force of the new valuation roll.

718. The valuation roll must include all taxable property in the municipality, and must specify in so many distinct columns and in the following order :

1. The consecutive names on the roll ;

2. The names, surnames and qualities of the owners of taxable property, if they are known ;

3. The quality and age of the owners ;

4. By whom it is occupied ;

5. The qualities of the occupants, when they are not the owners ;

6. The indication or designation of the taxable real estate, in the manner prescribed by a resolution of the council ; but for any lot or part of any lot entered in the cadastre, it is necessary to use the numbers of the cadastre ;

7. The real value of such real estate, giving separately the value of any part of a lot occupied by any person not being the owner ;

8. Their annual value or rent ;

9. The nature of the property declared taxable by article 710 ;

10. The value of such property ;

11. The total value of the taxable property of each person, including, if necessary, the real value of the real estate and the value as mentioned in the foregoing paragraph ;

12. The names, calling and qualification of the following persons, being males of the full age of twenty-one years, and subjects of His Majesty by birth or naturalization :

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(*a*) Teachers, teaching in the municipality under the control of school commissioners or trustees ;

(*b*) Retired farmers or proprietors (annuitants) receiving a rent of at least one hundred dollars ;

(*c*) Fishermen, owners of boats, nets, fishing-gear and tackle or shares in a registered ship, and the actual value thereof ;

(*d*) Farmers' sons, working on their father's or mother's farm ;

(*e*) Sons of owners of real property residing with their father or mother ;

(*f*) Priests, *curés, vicaires,* missionaries and ministers of any religious denomination, domiciled for upwards of six months in the municipality ;

13. All other information required by the council ;

14. The real value of the property declared not taxable by article 712 ;

15. The number of persons resident in the municipality ;

16. All other details prescribed by the provincial secretary ;

17. The valuation roll shall be summed up in the columns or parts which may be summed up, showing the total of each column.—R. S. Q. 6149 ; 52 Vic., ch. 4, s. 7 ; 53 Vic., ch. 63, s. 7 ; 55-56 Vic., ch. 4, s. 8.

Decision. — The valuation roll ought to indicate all the taxable and non-taxable property and the value of the latter should be indicated in a separate column. *Brisebois* vs *Village of Roxton Falls,* 3 Rev. de Jur. 26.

719. The actual value of the taxable real estate includes the value of all buildings, factories, or machine shops erected thereon, and of any improvements which have been made thereto, save in so far as is set forth in the two following articles.

720. Every iron railway company or wooden railway company other than those mentioned in the fifth paragraph of article 712, possessing real estate in a local municipality, must transmit to the office of the council of such municipality, in the month of May in each year, a return showing the real value of their real estate in the municipality other than the road, and also the actual value of the land occupied by the road, estimated according to the average value of agricultural land in the locality.

Such return must be communicated to the valuators by the secretary-treasurer in due time.—R. S. Q. 6150.

721. The valuators, in making the valuation of the taxable property in the municipality, must value the real estate of such company according to the value specified in the return given by the company.

722. If such return has not been transmitted in the time pre-

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scribed, the valuation of all the immoveable property belonging to the company is made in the same manner as that of any other rate-payer.

723. If the owner of land is unknown, the valuators insert the word "unknown" in the column of names of owners, opposite the description of such land.

724. The lieutenant-governor may, by instructions given to any local council, require the insertion in the valuation roll of all details and information he may desire, respecting the census and statistics of the inhabitants of the municipality, and of their moveable and immoveable property; and the valuators are bound to obtain such details and information by every means in their power, and to insert them with accuracy in the valuation roll prepared by them.

725. The valuation roll must be signed by at least two of the valuators who drew it up or caused it to be drawn up, and by the secretary-treasurer or any other person whom they employed as clerk, and it must be attested by all such persons on oath taken before a justice of the peace in the following form:

We (*names of valuators and of the clerk or secretary-treasurer*) swear and solemnly affirm, each for himself, that to the best of our knowledge and belief the foregoing valuation roll is correct, and based upon the real and annual value of the property, and that nothing has been unduly or fraudulently omitted or inserted in it: So help us God.—R. S. Q. 6151.

Decisions. — 1. A valuation roll is null and void if the valuators have been sworn by a commissioner *per dedimus potestatem*; they should be sworn by one of the officers mentioned in art. 6 M. C. *Price* vs *Corporation of Tadousac.* 1 Rev. Jur., 206 C. C. Gagné J.

2. The valuation roll is null and void if drawn up by three valuators, of whom one was appointed by the mayor upon the refusal of one to act when appointed by the council; even although this appointment by the mayor is confirmed by the council, when the roll is homologated. It is also null and void if the roll is not signed and attested under oath, by the assessors and the secretary-treasurer who has acted as clerk. *Rolfe* vs *Corporation of the township of Stoke.* C. Q. B., 24 L. C. J., 213.

726. The valuators must deposit the valuation roll made by them, within the delay fixed for making such roll, in the office of the council. Such deposit cannot be made after the prescribed delay has expired.

727. If, at the expiration of the time prescribed, the valuators have not made and deposited the valuation roll in the office of the council, the mayor or the secretary-treasurer must without delay inform the lieutenant-governor of the fact, by letter addressed to the provincial secretary.

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Any rate-payer may in the same manner give such information to the lieutenant-governor.

728. The lieutenant governor, as soon as such negligence or refusal of the valuators has been made known to him, appoints three valuators whom he orders to make a valuation roll, and deposits the same at the office of the council, within a delay fixed by him.

If such delay be not fixed, these valuators must make and deposit the valuation roll within the thirty days following the notice of their appointment.

729. The valuators appointed by the lieutenant-governor in virtue of the preceding article only act in relation to the valuation roll which the valuators in office omitted to make.

Such valuators are municipal officers ; and in the exercise of their duties they are invested with the same rights and powers, subject to the same obligations, and liable to the same penalties for refusal, negligence, default or omission, as the valuators appointed by the council.

730. Each of the valuators appointed in virtue of article 728 is entitled to an allowance of two dollars for each day he is employed in valuing taxable property and in drawing up the valuation roll. The amount of such fee is determined and taxed by certificate of the mayor, and is recoverable in the manner prescribed for penalties imposed by the provisions of this code, by the valuator entitled thereto, from the valuators in default, who are jointly and severally liable for the amount of the same with costs.

731. The lieutenant-governor may, if the valuators appointed by him in virtue of article 728 refuse or neglect to make and deposit the valuation roll within the prescribed delay, replace them by new valuators, and so on until the valuation roll be made and deposited in conformity with the provision of this title.

732. So soon as the valuators have deposited the valuation roll in the office of the council, the secretary-treasurer must give public notice thereof.

733. The three valuators must act together in making the valuation roll.

CHAPTER THIRD

EXAMINATION OF THE VALUATION ROLL

734. The local council must, within thirty days next after the notice given in virtue of article 732, examine and amend the valua-

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tion roll deposited by the valuators, even though no petition or complaint has been made in reference thereto, by making the valuation of any taxable property which may have been omitted, and by inserting therein such omitted property with its value and all other particulars relating thereto required by article 718 ; by striking therefrom any property erroneously inserted therein ; by fixing at such sum as it thinks reasonable any valuation of taxable property which it judges to have been made under or above its true, real or annual value ; or by correcting the names of persons entered therein or the description of the lands mentioned therein ; or by inserting therein whatever the valuators may have omitted to insert.—R. S. Q. 6152.

Decisions. — 1. The Court can oblige a public officer to fulfil a public duty, although the statutory delay for fulfilling it has expired. In consequence the board of revisers was ordered to inscribe names upon the municipal electoral list, after the delay established by the statute for such inscription had expired. *Déchêne* vs *Fairbairn*, 2 M. L. R. 472. In Review.

2. If the valuation roll is not amended during the delay established under art. 734 M. C. it is then in force, and it is forbidden to make any change until the new roll is made except in cases provided by law. *Brisebois* vs *Corporation of the village of Roxton Falls*, 3 Rev. de Jur. 26 C. C. ; Lynch, J. See art 742.

3. The duty of the municipal council to examine and if necessary amend the valuation roll, within thirty days after it is deposited by the valuators is a matter of public order ; this examination is essential, and its omission makes the roll null and void. A rate-payer can take a writ of Mandamus against the council, to force it to make such examination, although the delay established by law has expired.

The coming into force of the roll by lapse of time under art. 742 is not an objection to the issuing of a writ of Mandamus, nor a bar to the examination of the valuation roll, when it had not been examined in due time.

4. A by-law was passed by a municipal council providing for the construction of a drain to pass in front of an immoveable afterwards sold by defendants to plaintiff. The by-law fixed the charges at $1.75 per running foot. The drain was constructed before the date of sale but the assessment roll was made after. Held. — That as the by-law created the charge and the amount thereof while the assessment roll merely registered the fact already determined the charge was covered by the vendor's legal warranty. *Masson et al.* vs *Seminary of St. Sulpice*, 17 Q. O. R., 573, S. C.

735. Every person who considers himself wronged by the valuation roll prepared by the valuators may demand that the same be amended in such a manner as to cause that justice be done to him, either by producing an application in writing at the office of the local council upon or before the day fixed for the examination of the roll by the council, or by stating his complaint verbally before the council at such examination.

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736. Before the local council proceeds to the examination and amendment of the valuation roll it must, by public notice, inform the inhabitants of the municipality of the day and hour of the session at which the same is to be commenced.

737. The council, at the time of the examination of the valuation roll, must take notice of all complaints lodged at its office or made verbally before it, and hear all parties interested, and the valuators present, and their witnesses.

738. Any amendment made to the valuation roll must be entered upon such roll, or on a paper annexed thereto, with the initials of the secretary-treasurer.

A declaration testifying to the accuracy of the amendments and determining the number thereof, together with the time at which they were made, must be entered on the roll or annexed thereto, under the signature of the president and the secretary-treasurer.

739. The secretary-treasurer is bound to forward to the office of the county council, within ten days after the expiration of the thirty days mentioned in article 734, a certified copy of the valuation roll as it then stands.

The secretary-treasurer shall also, within the thirty days following the coming into force of any valuation roll or of the revision thereof, forward to the provincial secretary and to the registrar of the registration division in which the municipality is situate, a certified copy of such valuation roll or of such revision, under a penalty for each contravention of a fine of twenty dollars, and a further fine of two dollars for each day during which the contravention lasts, and in default of payment of the fine, of an imprisonment of twenty days.

The suit for the recovery of such fine may be instituted by and in the name of the collector of provincial revenue for the district within the limits whereof is situated the municipality of which the secretary-treasurer is in default.—57 Vic., ch. 52, s. 2.

740. Every county council must, during the month of September in the year wherein the new valuation rolls are made in virtue of article 716, or at a subsequent date fixed by the county council or by the warden of the county, special notice to that effect having been previously given to all the members composing such council, examine all the valuation rolls made in the local municipalities of the county, which have been forwarded to its office; ascertain whether the valuation made in each of them bears a just proportion to the valuation made in the others; and increase or decrease, if necessary, the amount of the valuation entered on the roll of each of such municipalities, by any rate per cent which it deems requisite to establish a just proportion between all the valuation rolls made in the county municipality.

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Nevertheless the county council cannot in any way reduce the total amount of all the valuation rolls made in the county municipality, and forwarded to its office.

The valuation roll so amended serves only for county purposes.—R. S. Q. 6154.

741. When a copy of a new valuation roll is forwarded to the office of the county council, after the examination made in virtue of the preceding article, the county council must, within thirty days thereafter, take communication of the new roll, and. if necessary, proportion the amount of the valuation thereof to the amount set forth in the rolls of the other local municipalities of the county, in conformity with the rule laid down in the preceding article, without however diminishing or increasing the several amounts of the valuation rolls in force in the other municipalities.

742. Every valuation roll comes into force as amended, if it has been amended within the time prescribed, notwithstanding any appeal pending before the county council, in virtue of article 927, for local purposes, from the expiration of the thirty days mentioned in article 734, and for county purposes, from the expiration of the delay during which the county council could take communication thereof.

The default of the county council to comply with the provisions of articles 740 and 741 does not prevent the valuation rolls from coming into force for county purposes.

743. It remains in force until the coming into force of the new valuation roll made in accordance with the provisions of this title; and, during such time, it serves as a basis for all taxes, rates, apportionments in money, labor or materials, imposed in virtue of municipal by-laws, *procès-verbaux*, or acts of apportionment, as well as for any real property qualification, excepting that of local councillor, and for the payment of all municipal debts, except in special cases otherwise provided for by the provisions of this code.—R. S. Q. 6155.

Decisions. — 1. The electoral act of 1875 requires 1o. That the valuation roll should be conclusive as to the value of property. 2o. That no person should be on the voters' list, if not on the roll. 3o. That every one who appears qualified by the roll should be on the voters' list, unless personal disqualification should forbid inscription on the roll.

The municipal code indicates how a valuation roll may be contested. In collateral proceedings such as the contestation of the voters' list, there can be no contestation of final decisions arrived at concerning such roll.

The secretary-treasurer has no right to correct the valuation roll.

The date of the qualification of a voter is that of the list, and it is at the moment that the list is drawn up by the secretary-treasurer, that the qualification should exist and appear upon the roll.

Complaints must be made to the council concerning the list drawn up

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by the secretary-treasurer; or an appeal made to the judge from the decision of the council upon such complaints.

1o. By virtue of sect. 33 of the electoral law of 1875, which determines that if the council after proof made is of opinion that a property has been rented, ceded or transferred, with the sole object of giving a person the right to vote, the name of this party will be struck off from the list upon written complaint

2o. Upon facts which deprive a person of the right to vote, who otherwise would have all the qualifications, and when those facts are not apparent upon the valuation roll nor upon the voters' list, e. g. when a person is inscribed upon the list, who is not a British or is incapacitated by interdiction, insanity or loss of rights.

3o. If the secretary-treasurer has put on the list a person who has no right to vote, under articles 11, 267, and 270, of the electoral law sect. 14, *as amended by* 39 Vic., ch. 13, s. 2.

4o. If the secretary has omitted a person who *by the roll* has the right to vote, and is not otherwise qualified, or if he has inserted the name of a person who *by the roll* is not qualified.

5o. Upon facts which can affect the right to vote and which are not apparent upon the roll, as when a tenant does not keep house. (Sect. 2 par. 5 Electoral law of 1875). S. C. Kamouraska, April 1877. Tachereau, J. *In re* The voters' list *of the County of Kamouraska*. 3 Q. O. R., 308.

2. The valuation roll is an authentic document of the real annual value of taxed property of a municipality for electoral purposes.

When the list is revised, no other value than that mentioned upon the roll will be admitted.

The valuation roll is not proof of the title of the owner, occupant or tenant, when the list is drawn up.

The council may, when the list is revised, replace the names of persons, who were not before then owners, occupants or tenants, by those qualified as such when the list is drawn up:

Under clause 8, sec. 3 of the Electoral law of Quebec, annual value of real estate as required by-law, is sufficient to give the proprietor and occupant the right to vote even if the real value would not give such qualification; but the rental does not convey the same right to the tenant, unless the real estate which he occupies is of the real valued required. Magistrate's Court of Terrebonne, Ste. Scholastique, 21 June 1875. De Montigny, Magistrate. *Gratton* vs *Corporation of the Village of Ste. Scholastique.* 7 R. L. 356.

3. In *Filiatrault* and *Corporation of the Parish of St. Zotique.* C. S. Montreal 9 March 1886. Mathieu, J. 14 R. L., p. 405, it was held that the qualification of parliamentary voters, required by sections 8 and 9 of the Electoral law of Quebec must exist when the list is drawn up, and that the valuation roll is merely proof of the valuation or real estate.

CHAPTER FOURTH

GENERAL PROVISIONS

744. (*Repealed by* S. R. Q. 6156.)

745. The owners or occupants of taxable real estate or of property declared taxable by article 710 are bound, in so far as it lies in their

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power, to give all the information applied for by the valuators, and to answer truly the questions put to them by the valuators relative to the value of their properties, and upon their refusal to give such information or to answer such questions truly, such owners or occupants incur a penalty of not less than five or more than eight dollars.

746. After every change of owner, occupant or tenant of any land set forth in the valuation roll in force, the local council, on a written petition to that end and after sufficient proof, shall erase the name of the former owner, occupant or tenant, and inscribe therein the name of the new one.—R. S. Q. 6157 ; 60 Vic., ch. 57, s. 6.

Decisions. — 1. The collection roll for school purposes is not affected, though the municipal valuation roll should be null and void. The right a council to amend a valuation roll implies the right to change it, and even to draw up a new one.

The obligation upon municipal councils to draw up a valuation roll every three years, does not prevent them from drawing one up before the expiration of that period. C. S. Montreal, 10 April 1877, Dorion J. *School Commissioners of Hochelaga village* and *Hudon*, 10 R. L., 113 ; 9 R. L. 16.

2. The municipal council has not the right, besides the annual revision of the valuation roll, to place upon the roll a special valuation of a part of a certain property and already valued in its entirety upon said roll.—No alteration after each change in value is authorized by this article, but council should postpone any alteration until the annual revision. The council must change the name of the owner, even though the change is done with the intent of controlling the municipal election. *Théoret* vs *Senécal* and *Demers et al. mis-en-cause.* C. C. 17 R. L. 310.

746*a*. The local council shall, in any year in which a new valuation roll is not made, revise and amend the valuation roll in force, by complying with the formalities prescribed by articles 736, 737 and 738.

Such revision takes places during the month of September or October, in the judicial districts of Gaspé, Rimouski, Kamouraska, Montmagny, Chicoutimi and Saguenay, and during the months of June or July, in the other districts of the province.

The amendments so made to the valuation roll come at once into force, subject nevertheless to appeal to the circuit court under article 1061.—R. S. Q. 6158 ; 52 Vic., ch. 54, s. 15.

Decisions. — 1. A new roll should not be drawn up by council in the year fixed for the revision. If within three years, a new roll is drawn up instead of being revised merely, the corporation and its officers, can be enjoined to abstain from collecting taxes under this new roll. *Morgan* vs *Côté*, Q. B. Montréal, 22nd June 1880. 3 L. N. 274 ; Ramsay's app. cases, 466 : 3 L. N. 377 ; 7 Sup. Q. B. 1.

2. Every voter is interested in requiring the annual correction of the valuation roll, as the voters' lists are to be made from the valuation roll.

An appeal lies to the Circuit Court, under articles 746*a* and 1061 M. C.

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from the refusal of the council to take into consideration a petition under art. 746*a* M. C. even if it was not fyled in writting before the council, provided that there is written proof of its having been made. *Boileau* vs *Corporation of the parish of Ste. Geneviève.* C. C. 18 R. L. 74.

3. The terms of this article 746*a*. so far as regards the revision of the valuation roll "in the months of June on July" are directory only, and the municipal council charged by law with the duty of revision, is not divested of authority to make such revision when the time specified in the article has expired before the duty has been performed. *Canadian Pacific Railway Co.* vs *Allan et al.* 19 Q. O. R., 57, S. C.

747. Whenever the valuation roll has been set aside under article 100, the former revives and avails until a new valuation roll comes into force.

TITLE THIRD

OF MUNICIPAL ROADS

CHAPTER FIRST

GENERAL PROVISIONS

748. All roads which lead solely to the landing stations of iron or wooden railways, to ferries or to pay-bridges, and all public roads, except those mentioned in article 751, are under the control of municipal corporations, and are made and maintained in conformity with the provisions of this code.

749. Land or passages used as roads by the mere permission of the owner or occupant, are municipal roads, if they are fenced on either side or otherwise divided off from the remaining land, and are not habitually kept closed at their extremities, but the property in the land, and the obligation to maintain such roads, continue in all cases vested in the owner or occupant.

The council or the board of delegates who have the management of such roads may, by resolution, order the owner or occupant to close the same by means of fences or gates, under a penalty of twenty dollars for each day he may neglect or refuse to execute such order.

750. If they are fenced on either side, or otherwise divided off from the remaining land, and are not habitually kept closed at their extremities, they are municipal roads ; but the property in the land and obligation to maintain such roads continue vested in the owner or occupant.

The council, or the board of delegates who have the management

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of such roads, may order the owner or occupant to close the same by means of fences or gates, under a penalty of twenty dollars for each day he may neglect or refuse to execute such order.

Decisions. — 1. Every road open and frequented as such by the public without dispute, during ten years or more, is considered a public road, according to law. C. Q. B.; Québec. *Mignerand alias Mayrand* and *Léyaré*, 6 Q. L. R. 120.

2. A private road which becomes public by permission of the interested parties ought to be maintained by the owners of the land. *Larivière* vs *Arsenault*, 37 L. C. J. 316.

3. 18 Vic., ch. 100, s. 41 only applies to a road when it has served during at least ten years as public road without any interruption. Quere: Is this statute in force since the promulgation of M. C.? C. Q. B. *Fortin* and *Truchon*, 12 L. N. 280; *Léveillé* vs *The City of Montreal*, 1 Q. O. R.; S. C. in review, 410.

4. A piece of land offered to the municipal authority, which without formally accepting it marks such street on its plans, although it levies no tax on this land, becomes by destination a public street, if the owner sells building lots along that street, which are fenced in by the buyers, and if the public passes through it as if through a public road. *Child* vs *The City of Montreal*, 6 M. L. R., S. C. 393.

5. A road which has always been a thoroughfare for the neighboring land owners, is considered a public road. No neighbor has the right to obstruct it or make it his own under the pretence that his road is upon his private property. *Théoret* vs *Ouimet*, 1 M. L. R; S. C. 275.

6. A road which is not fenced on both sides and which is closed by gates, is not a public road. The owner of the land where such road is situated will oblige his neighbor to make his part of the fence along that road. *Neil* vs *Noonan*, C. Q. B., Quebec, 1 February 1888, confirming judgment in review on the 31 March 1887, which had set aside the judgment of S. C. 19 R. L. 334.

7. A municipal corporation which takes possession of a street open by private party, which makes its level, and puts drains into it, is obliged to pay the owner the value of that street. *Léveillé* and *The City of Montreal*. 1 Q. O. R: S. C. in review 410.

8. A municipal corporation, or its employees who work upon a road open for twenty-five years and more, and regulated by *procès-verbal*, cannot be sued by action "en complainte" or in damages. *Hough* vs *The Corporation of Ireland*. C. Q. B., 13 R. L. 581.

9. Arts. 749 anud 750 are applicable to a case where certain ratepayers, at their own cost and responsibility have opened a road not closed at its extremities and not fenced in. The council may order the road to be enclosed under a penalty of $20 a day and cannot lay any burdens upon persons who had nothing to do with the opening of the road. *Hamel* vs *Corporation of St. Pie* and *Vasseur et al.*, 6 Rev. de Jur. 250.

10. Although a road may have been a public thoroughfare for if it appears by his actions that he intended to keep the ownership, e. g. by maintaining it himself and by placing gates, etc., will be considered a road of tolerance, and the owner can in any time close it from the public. *McGinnis* vs *Letourneau*, 14 L. N. 314.

11. Though, by deeds of sale and by plans the owner has indicated the land in question to be subject to a right of way in favour of

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grantees (proprietors of lots on the front of the street), and through the street has been a thoroughfare for such proprietors and for the public during many years without any formal deeds stating that it was a public road, the municipal corporation cannot regulate it by *procès-verbal* and take possession of it without regularly expropriating it, and without paying its value according to law.

And even though the municipal corporation should have acquired that road by dedication its right in that part of the road which was covered by a wharf landing on a lot, is purged by a judicial sale of that lot without any opposition by the corporation.

The corporation, under such circumstances having taken possession of that part of land without expropriation, a possessory action by the owner will be maintained. *Lavertu* vs *Corporation of St. Romuald*, 11 Q. O. R. (S. C.) 254.

751. Public roads under the control of the federal or provincial government, and turnpike roads governed under letters-patent or special acts or under the law respecting companies for the construction of roads and other works, do not fall under the control of municipal corporations.

2. Roads and bridges built by the provincial government in a municipality are at the charges of the local municipality or of the municipality of the county, as the case may be, in the same manner as all other roads and bridges.

3. Any municipal council has the right to regulate by *procès-verbal* any colonization road or bridge built by the provincial government, but cannot order it to be closed without an order of the commissioner of agriculture and colonization.

4. If however the government establish toll-gates upon any colonization road or bridge, it ceases to be at the charges of the municipality.—R. S. Q. 6159, 1715, et seq.

Decision. — A company incorporated under 33 Vic., ch. 36, s. 40, has a right to place toll-gates, although its road does not cover a mile in extent. The local municipalities include the village municipalities. Article 27 M. C. merely mentions what rural municipalities are considered as local municipalities without naming village municipalities which are governed by the general rule provided for by part 3 of art. 19 M. C.

A company has the right to macadamized a road in a village municipality, and put toll-gates on it. *The Turn-pike Co. of Pointe-Claire* and *Leclerc*. 1 M. L. R ; Q. B. 286 ; 8 L. N. 233.

752. The ground occupied by any municipal road belongs to the municipal corporation under whose control it is placed, and cannot be in any manner alienated, so long as it is employed for such purpose.

This article does not apply to the ground of a road which leads solely to a ferry, or pay-bridge, and which is maintained at the expense of the proprietors of such ferry or pay-bridge.

Decision. — A company incorporated by letters-patent cannot lay a telephone line and erect posts in a city, limits without having acquired

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the right so to do from provincial and municipal authorities. *The Sherbrooke Telephone Association* vs *The Corporation of the City of Sherbrooke*, 19 R. L. 538.

753. Every part of the land of a discontinued road returns of right to the land from which it had been detached, and is at the charge of the occupant of such land.

If the land of the discontinued road has not been taken from the neighboring lots, it returns of right to the lands between which it is situated, in the proportion of one-half to each.

Nevertheless, if one of the proprietors whose property borders upon the discontinued road, gives the ground or a part thereof required for the new road, the land of the former road belongs to him proportionately to the extent of that given by him.

Persons who have shares of fencing along the discontinued road have the right of removing such fencing within fifteen days from the closing of the road.

Decision. — The defendant took possession of a strip of land which originally formed part of a public highway. The plaintiff asked that the defendant be ordered to cease his disturbance and replace the fence as it was. Held :—That it was incumbent upon the defendant, in order to make good his pretention that the strip in question had ceased to be a public road to prove that by some act of duly constituted and competent authority, qualified to act on behalf of the public, the road had been closed or abolished and the rights of the public thereto renounced ; or, at least, such a total cessation of use by the public of the road as a public road, and such a conversion thereof to other uses acquiesced in by competent authority, as would constitute a total abandonment by the public and such competent authority of all right thereto as a public road. *Davidson* vs *Meloche*, 20 Q. O. R., 26 S. C. Doherty J.

754. Municipal roads are either local roads or county roads.

755. Until otherwise provided in virtue of articles 758 or 759 :

1. Every municipal road or every part thereof, wholly situate in one local municipality, is a local road ;

2. Every municipal road or every part thereof, lying between two local municipalities, or partly in one local municipality and partly in another, is a county road ; and if such road or part of a road lies between two local municipalities which form part of two county municipalities, it is the road of such two county municipalities.

Decisions. — 1. A road regulated by *procès-verbal* under the authority of the road inspector of the county council, and before the municipal and road laws for the Province came into force, and before the coming into force of the Municipal Code, when there existed but county councils, is a county road and ought to be considered as such until it is otherwise changed or modified by the true authority which is the county council itself. A *local* municipal county has no power or jurisdiction to amend change or modify such road ; a road running in a single local municipality but dividing in its whole course the territory of two local municipalities, is a county road under the Municipal Code, as being the division

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between two local municipalities. *Goulet* vs *Corporation of the parish of Ste. Marthe*, 29 L. C. J. 107.

2. A *procès-verbal* of a road, adopted in 1852 by a county council can only be modified by competent authority; in the present case by the county of Lotbinière in which the entire road is situated. *Lambert et al.* vs *Corporation of Megantic*, 7 Rev. de Jur. 162.

3. The notice given by a municipal body to amend a by-law or enact another in its place respecting a public road, which does not mention it nor the proposed amendments or by-law is not sufficient, particularly when those who complain suffer prejudice.

By art. 755 M. C. the road between two municipalities is a county road and when in virtue of art. 758 the county council declares it to be a local road under the care of these municipalities, it has no longer any jurisdiction to amend a by-law and declare it *de novo* to be a local road to be maintained by the two municipalities. It has the right to declare it again a county road and may then according to art 755, apportion the necessary work by indicating the lands of the various proprietors bound to maintain it in order. *Corporation Township of Nelson* vs *Corporation County of Megantic*, 8 Rev. Jur. 23. S. C.

756. Every municipal road known, at the time of the coming into force of this code, either as a local or a county road, continues to be so known and to be governed as such, until the contrary is provided under the authority of this code.

757. Municipal roads are under the control of the corporations of the municipalities to which they belong. If they are the roads of several county municipalities, they are under joint control of the corporations of such county municipalities, represented by the board of delegates.

758. The county council may, by resolution or in a *procès-verbal*, declare :

1. That any road under control of a local corporation of the county municipality, be for the future a county road, or

2. That any county road under the exclusive control of the corporation of the county, be for the future a local road under the control of the corporation of the local municipality in which it is situate, or which it separates from any other municipality.

3. The county council, after having declared a local road to be a county road, may, when occasion requires, determine by *procès-verbal* which corporations shall be liable for the maintenance and repairs of the road, and shall declare in such *procès-verbal* what proportion each corporation shall contribute.—61 Vic., ch. 49, s. 7.

Decisions.—1. A county municipality which decides that a local road will be for the future a county road, becomes responsible for all fines imposed by law when said municipality fails to maintain it in good order. *Huot* vs *Corporation of County of Montmorency*, 2 Q. L. R. 253; *Corporation of Township of Granby* vs *Corporation of County of Shefford*, 10 R. S. C. 113.

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2. A resolution charging local municipalities with the expense of maintaining county roads is null and void. *Corporation of Granby* vs *Corporation of the County of Shefford.* 10 R. S. C. 113. (This decision is not applicable since 61 Vic. v., c. 49).

3. The authorized declaration under art. 758 M. C. ought only to be published under art. 761 in municipalities which are interested in the *procès-verbal. McEvilla* vs *Corporation of the County of Bagot.* 7 R. L. 360

4. The county council can declare a local road to be a county road, by placing its maintenance under the local municipality. *Lacombe* vs *Corporation of Hochelaga County.* S. C. 13 L. R. 611.

5. A county council has no right to order a local road to become a county road with a view to putting an end to it. *Corporation of the County of Arthabaska* and *Patoine.* C. Q. B., 9 L. N. 82.

6. A local road entirely situated within the limits of a local municipality cannot be opened and cannot become a county road under the authority of a county council, unless the local road is already established as such by competent authority.

A local corporation cannot be condemned to make within three months, and under a penalty of $1,000 a road ordered by a county council, the penalty imposed under art. 793 M. C. being the only penalty that can be incurred.

A *procès-verbal* ordering that a municipal road run alongside a rail-road going north-east until a convenient spot is reached to cross said rail-road does not sufficiently mention the situation of that road and will be declared null and void. *Bothwell* vs *Corporation of Wickham-West.* S. C. R. 6 Q. L. R. 45.

7. A county council cannot establish by *procès-verbal* a road partially situated in a local municipality and partially in an other local municipality of the county without declaring by resolution or *procès-verbal* that the road is a county road.

A road established by a county, ought to be kept under the control of such county. In Stanstead, Brome, Missisquoi, Huntingdon and Richmond counties, with the exception of the municipalities mentioned in art. 1080 M. C. the county road is established and maintained by general contribution imposed upon every corporation of the county according to the total value of taxable properties saving the cases mentioned under art. 190 and 191. An assessment ordered for a county road upon two local corporations in the county, outside of the execption mentioned in arts. 190 and 191 is illegal. *Ball* vs *Corporation of County of Stanstead.* C. C. 17 L. C. J. 312.

8. When a *procès-verbal* orders that certain work be done under the direction of a county council, the parish corporation where the work is to be done has no right to control such work nor to sue the rate-payers to recover its value. S. C. *Corporation of the parish of Ste. Geneviève* vs *Legault,* 5 R. L. 467.

9. A county council has no right to regulate by *procès-verbal* the work to be done upon a road, by declaring in the *procès-verbal* that such road will be in future a local road : such *procès-verbal* will be declared null and void by the Superior Court. *Legault* vs *Corporation of Jacques-Cartier.* S. C. 17 R. L. 357.

10. The board of delegates cannot assume any jurisdiction upon a local bridge, less than eight feet span, it not being a municipal bridge.

The board of delegates by deciding a local bridge to be belong to, two

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counties, will place it under the control of both corporations represented by the board of delegates, the municipal councils of both counties having no control over it.

The board has no right to put such a bridge under control of one or several local municipalities, as the county corporations are jointly and severally responsible for the maintenance thereof.

A local bridge ought only to be declared a county bridge for good reasons which the court has a right to enquire into. The fact that several inhabitants of different municipalities pass now and then over a bridge and that their farms drain into the river flowing under this bridge, is not a sufficient reason. The court will not change the decision of the board of delegates to make it according to law, when the principles upon which the decision is given would have to be put aside. *Corporation of Clarenceville* and *Corporation of the County of Iberville*, &c. 1 Rev. Jur., 393. S. C. Lynch, J.

759. The board of delegates may also, by resolution or in a *procès-verbal*, declare :

1. That any local road situate within the limits of the county municipalities, whereof it represents the corporations, be for the future a county road under the joint control of such county corporations ; or

2. That any county road under the exclusive control of one of the county corporations which it represents, be for the future under the joint control of all such county corporations ; or

3. That any road under the joint control of the county corporations which it represents be for the future a county road under the exclusive control of one only of such county corporations, or a local road under the control of the corporation of the local municipality in which it lies, or which it divides from another municipality.

760. From the date of any declaration made under either of the two preceding articles, the work to be performed on any road, with respect to which the resolution has been passed, is either at the sole charge [of the municipality, the corporation whereof has the control of the road, until new provisions are made according to law.] 2 Edw. VII, ch. 46.

761. The declarations mentioned in articles 758 and 759 cannot be made until after a public notice to that end has been given, and they must be published immediately after the passing thereof. (only in the municipalities that are interested or affected by such *procès-verbaux*, by-laws or resolutions.—1 Ed. VII, ch. 38.)

Note. — This amending statute is declared by section 2 to be merely declaratory and is not to be interpreted as meaning that the amended law was different from that which is set forth in the preceding section.

Decisions. — 1. A rate-payer under a *procès-verbal* or by-law if there be no *procès-verbal*, is entitled to public notice.

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The declaration authorized under article 758 of the Municipal Code, to order a local road to become a county road and *vice versa*, is to be published under article 761, and only in municipalities interested in the *procès-verbal*. *McEvilla* vs *Corporation of county of Bagot*. 7 R. L. 360.

2. A declaration under that article is without avail, if the notice therein mentioned has not been given. *Bothwell* vs *Corporation of Wickham-west*. S. C. R.; 6 Q. L. R. 45.

Before passing any enactment with reference to a local bridge, the county council must, order by resolution, that such bridge will be deemed, in future, a local bridge.

Persons interested in a bridge to the extent only that their lands are drained under the bridge, can only be held to contribute in proportion to the lands so drained and not according to the total valuation of their property.

An assessment must not be incompatible with the *procès-verbal* relating to it and exemptions cannot be made in the assessment roll unless the *procès-verbal* is first amended. *Taillon* vs *Corporation of Terrebonne*, 6 Rev. de Jur. 202.

762. The powers conferred by articles 658 and 659, on the county council and the board of delegates, may be also exercised by them in regard of any road to be made, in the same manner as for roads already made.

762*a*. Any by-law or *procès-verbal* made to close a road leading into or from any neighboring local municipality, or for diverting such road at a point where it leads into or from such municipality, has no force or effect until approved of by a resolution of the county council, carried in the affirmative by two thirds of the members composing such council.

If the neighboring local municipality forms part of another county municipality, the by-law or *procès-verbal* must be approved of by a resolution of the board of delegates of such county municipalities, carried in the affirmative by two thirds of the members composing the board of delegates.

763. All county or local municipal roads are either front roads or by-roads.

Front roads are those whose general course is across the lots in any range, and which do not lead from one range to another in front or in rear thereof.

All other municipal roads are by-roads.

764. A front road passing between two ranges is the front road of both ranges, unless such road be, by resolution of the council or of the board of delegates under whose jurisdiction it is situate, declared to be the front road of one of such ranges.

765. The front road of a lot includes every portion of such road which crosses such lot throughout its breadth, or upon which such lot borders at one or other of its extremities.

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Whenever a road is the front road of two ranges, the exact half of such road adjacent to each lot is the front road of such lot.

But the council may order that the front road between two lots or two ranges or dividing a lot be kept in such manner, that each interested party shall have his share of the front road on the whole width thereof, and not on half the width, throughout the whole of such part of the road.

Roads in village municipalities are front roads, unless otherwise ordered by the council.

766. Any *procès-verbal* or any by-law respecting municipal roads may declare that any new road, or any road already designated or recognized as a by-road, be for the future a front road, or that any new road, or any road already designated or recognized as a front road, be for the future a by-road.

Every declaration constituting any road whatsoever a front road must at the same time set forth the land of which such road is the front road.

767. Every village council owns the land acquired or reserved for streets and public squares, and may, on opening up such streets, deviate from the plan, by giving the land marked out in such plan in compensation for that which has been taken in its place, notwithstanding the provisions of title eighth of this book; provided always that the opening of such street has become necessary owing to the sale of some lots bordering on such street.—R. S. Q. 6163.

768. Every front road must be at least thirty-six feet, and every by-road at least twenty-six feet, French measure, in width, between the fences on each side thereof.

(Any municipal council may, however, with the permission of the lieutenant-governor in council obtained on petition to him addressed in special and exceptional cases, order that the width be less than that above prescribed.—63 Vic., ch. 47.)

769. These roads may be wider than this article prescribes, if it is so ordered by the acts which govern them.

Municipal roads existing at the time of the coming into force of this code may retain the breadth which they have at such time, although such breadth be less than that required by the law under which such roads were established.

770. Every front road which is declared to be a by-road, or every by-road which is declared to be a front road, may retain its original width if, previous to such declaration, it possessed the width required by law.

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770*a*. In accordance with article 4616*a* of the revised statutes of the province of Quebec, every road or street in a city, town or village shall have a width of at least sixty-six feet, English measure. —53 Vic., ch. 47, s. 2.

Note. — A road or a street must be at least seventy English feet in width when a municipal council, a company, a corporation, a society or any party subdivides land into building lots. R. S. Q., 4616*a*, 53 Vic. ch. 47. S. 1.

771. Every road must have, if it requires it, on each side thereof, a ditch properly constructed, and having sufficient width and fall to carry off the water of the road and of the adjoining lands, and as many small drains as are necessary, communicating from one ditch to the other.

772. If, in order to convey the water from off any road, it is necessary to make any water-course upon the lands bordering upon such road, such water-course is regulated by a *procès-verbal* drawn up in accordance with the provisions of article 884, and is constructed and kept in repair either by the persons liable for road work upon such road, or at their expense, or by the owners or occupants of the lands, the waters whereof pass off or should pass off by such water-course, according as it is provided in the *procès-verbal*.

773. Ditches, small drains and bridges of less than eight feet span, form part of the municipal roads on which they are situated.

Pits, precipices, deep waters and other dangerous places, which must be filled up or protected in such a manner as to prevent accidents, form also part of the roads on which they are situated.

774. The fences which separate any front road from any land are at the costs and charges of the owner or occupant of such land, when the same are necessary ; but the establishment of a front road between two ranges or two concessions in no manner alters the obligations of neighbors, when such road is solely at the charges of one of the ranges or of one of the concessions.

Nevertheless, when a front road of an upper range is situated, in whole or in part, in a lower range, the proprietors of the range of which it is the front road are none the less bound to keep it in order.—R. S. Q. 6164 ; 53 Vic., ch. 63, s. 8.

Decisions. — 1. Municipal corporations, when they open a front road upon land are not obliged to close it entirely nor in part, notwithstanding art. 1080, M. C. The owner of such land is alone obliged to pay for the fence separating his land from such road. *Whitman* vs *Corporation of township of Stanbridge*. C. Q. B. 26 L. C. J. 144 ; 4 L. N. 406 : 2 D. C. A. 112.

2. Article 774, s. 2, which regulates the establishment of a front road

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between two ranges, does not alter the obligations of neighbours when the road is entirely situated in one range.

The obligation to fence off neighboring properties is continuous and must be according to the actual rights of the parties.

In the absence of a *procès-verbal* the extent of an obligation of this kind is determined by art. 505 C. C. which obliges neighbours to contribute, one half each, the cost of a fence. *Simard* vs *Sicard*, 7 Rev. de Jur. 404.

775. Upon any road which runs along the line of any land, one-half of the fence which separates such road from the land forms part of the work to be done upon such road.

But if a by-road divides a piece of land into two portions, the owner of such piece of land is not obliged to put up more fences along such by-road than he was before the establishment thereof; the remainder of the fencing forms part of the work on the by-road.

The portions of the fences to be made on such roads and by-roads, in default of provisions therefor in any *procès-verbal* or by-law, as the case may be, are determined by the road inspector, in such a manner that the position of the neighboring proprietor is not more onerous than it was before the establishment of such road or by-road.—R. S. Q. 6165.

Decisions. — 1. The superintendant when drawing a *procès-verbal* for a road, cannot include in the provisions of such *procès-verbal* that more than half of the fence is to be done by the public. The other half, to be done by the neighboring proprietors, is not subject to the provisions of such a *procès-verbal*. C. C. *Corporation of Parish of St. Luke* vs *Wing*. 12 R. L. 546; *Corporation of County of St. John* vs *Corporation of Parish of Laprairie*. C. C. 7 L. N. 327; 12 R. L. 546.

2. When under art. 535, the corporation takes all the roads under control, it is obliged to put up half the fence along those roads. The *procès-verbal* which before M. C. indicated that the fence was to be put up by proprietors, according the law of that time are now repealed. And if the corporation refuses to put up half of the fence, a confessory action will lie against it. Plaintiff may erect such part of the fence after the road inspector's report at the expenses of the corporation, if it has not been done within the delays fixed by the Court. And in such case the authority of the rural inspector is not required. *Corporation of l'Avenir* and *Duguay*. C. Q. B. 12 Q. L. R. 299; 14 R. L. 570.

3. A proprietor of lands interested in a *procès-verbal* respecting a road may ask that the corporation whose council has homologated the *procès-verbal* to comply with it and need not address himself first to the individual to whom certain duties are assigned by the *procès-verbal*. *Rousseau* vs *Corporation St. Louis de Blandford*, 6 Rev. de Jur. 146 S. C.

776. Every fence required on any municipal road must be well made, and kept in good order according to law.

Decision. — The rate-payers bound to do certain public works, cannot be called upon to employ materials other than those ordinarily used in the locality for similar works. Thus, wood being scarce in St. C. and neighborhood, and the custom being to replace wood fences by wire fences the rate-payers who were bound to do work on a road crossing the farm of

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Plaintiff, have justifiably replaced the old rotton wooden fence with a barbed-wire fence. *Bruneau* vs *Corporation of St. Constant.* 12 O. R ; S. C. 519 C. R.
Vide supra art. 746*a*.

777. Fords form part of the municipal roads with which they are connected. If a ford unites two different roads, one half of the ford forms part of the road to which it is adjacent.
They must be marked out with guide poles, and kept at all times free from loose stones and other impediments ; and the bottom thereof must be kept as smooth and even as practicable.

778. Noxious weeds, such as daisies, thistles, wild endive, chicory, celandine, and plants considered as such, which grow upon municipal roads, must be cut down and destroyed between the twentieth day of June and the tenth day of July in each year, by the persons who are bound to keep the roads upon which they are found in repair.—R. S. Q. 6166.

779. The work ordered by the law, and by *procès-verbal* or by-law as the case may be, necessary for constructing, improving and keeping in repair any municipal road is performed :

1. Either by the persons who are liable therefor under the *procès-verbaux* or the by-laws which regulate such road, or in default of *procès-verbaux* or by-laws, under the provisions of the law ;

2. Or by the corporation of the local municipality, if a by-law has been passed in virtue of article 535, or in any other case in which it is laid down in the by-law which orders such work, and that the same must be performed by the corporation.

780. Crown lands are not subject to contribute work upon municipal roads ; and the front roads of such lands are made and maintained as by-roads.
Nevertheless, the occupants of crown lands, whether under or without location tickets, are liable for the work on front roads or by-roads which appertain to such lands, in the same manner as a proprietor of any other land.

781. Whenever any lot or piece of land has been divided between several owners or occupants, after the passing of a by-law or the completion of a *procès-verbal* in virtue of which such lot or piece of land is liable for work upon any municipal road, all the owners or occupants of the lot or piece of land so divided are jointly and severally liable, saving to each his recourse against the others in proportion to the value of the land occupied, for the works ordered by the *procès-verbal* or by-law, until otherwise regulated by a subsequent *procès-verbal* or by-law, according as such works are regulated by *procès-verbal* or by by-law.

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782. No rate-payer of any local municipality is liable for work on any road situated within any neighboring local municipality, unless such road be a county road.

Decisions. — 1. A municipal by-law passed by a local council, ordering that bridges be made by proprietors who drain their lands under them will be declared null and void if the proprietors of those lands belong to several local municipalities. The road bridged being a county road, falls under the jurisdiction of the county council. *Goulet* vs *Corporation of the Parish of Ste. Marthe.* 2 L. C. J. 107.

2. When a part of a municipality has ceased to belong to a former municipality the rate-payers of that new part are not bound by a *procès-verbal* under which they were formerly bound to maintain the road in the part to which they no longer belong. S. C. *Deschênes* vs *Corporation of St. Mary.* 7 Q. L. R. 50.

783. The works on all the by-roads of the municipality in general, or on any particular by-road, to be performed by the labor of the persons liable for such works, are divided either in proportion to the extent in superficies of such land, by reason whereof such persons are liable for such by-road, or in proportion to the value of such land, according to the decision of the council of the municipality. The by-laws and *procès-verbaux* as to the works to be performed according to the extent of the land, in force on the 27th day of May, 1882, and which have not since been repealed, remain in force until they are repealed or amended.—R. S. Q. 6167.

784. All works upon municipal roads are executed in the manner prescribed by the provisions of this code, and by the *procès-verbaux*, or by the by-laws or orders of the council respecting the same.

785. All works ordered to be done upon county or local roads and upon side-walks are executed either under the superintendence and control of the inspector of the road division in which such roads or side-walks are situated, or under the superintendence and control of a special officer appointed for such purpose, by *procès-verbal* or otherwise, by the council or by the board of delegates having the control of such roads or side-walks.

Such special officer is invested with the same authority, subject to the same obligations, and liable to the same penalties as the road inspectors, in regard of the road or side-walk work for which he is appointed.

786. The work of building, improving or keeping municipal roads in repair, may be performed by contract awarded and entered into in accordance with the rules laid down in articles 892 ta 901, both inclusive, if it is so ordered by the *procès-verbaux* or by the by-laws which regulate the same, or by the council.

787. Repairs made on municipal roads, at the expense of the

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corporation, may be given and awarded in the manner and at the time prescribed in article 828.

788. Every municipal road must be at all times kept in good order, free from holes, cavities, ruts, slopes, stones, incumbrances, or impediments whatsoever, with hand-rails at dangerous places, in such a manner as to permit of the free passage of vehicles of every description, both by day and night, except in the case of article 389.

The side-walks must also be kept in good repair, free from all obstacles and impediments whatsoever, with hand-rails at dangerous places.

Decisions. — 1. Municipal corporations are bound to maintain the roads under their control in the condition required by law, and are responsible for all damages resulting from the non-execution of such obligation.

Courts are not disposed to apply literally the provisions of the law and to hold that municipal corporations must at all times, regardless of the season of the year and of special circumstances, keep and maintain the roads under their control in perfect condition, but the spirit of the law must be observed.

The corporation will be held responsible for its negligence. *Duclos* vs *Corporation of Township of Ely.* 5 Rev. de Jur. 177.

2. The responsibility of a municipal corporation for accidents resulting from the bad condition of its sidewalks is not subject to the condition that it be notified of such condition, nor can it plead infractions of its by-laws by third persons. *Beech* vs *City of Montreal.* 13 Q. O. R., 187, S. C.

3. Although a road is repaired in May or June, if a hole which causes an accident, was allowed to form in the course of Summer and to increase in size until it became dangerous the corporation will be held liable. *Duclos* vs *Corporation Township of Ely.* 5 Rev. de Jur. 177.

(See also art. 793.)

4. A person who sees before him a side-walk covered with slippery ice and neglects to turn out of his direct route for a few steps has no right of action for damages as a result of a fall thereon. A municipal corporation is not responsible for the transient condition of a side-walk. *Gundlack* vs *City of Montreal.* 17 Q. O. R. 294 S. C.

789. Every person bound to supply material or perform work upon municipal roads or upon side-walks, is *in morâ* to fulfil such obligations from the time when the by-law, resolutions, *procès-verbaux* or acts of apportionment, prescribing the performance of such work or the supplying of such materials, come into force, without any special or public notice being requisite, except in the case of work to be performed in common.

Persons liable to perform work required by the provisions of the law, are always *in morâ* to perform such work.—R. S. Q. 6168.

790. If the work has been given out by contract, the contractor is liable to the same obligations and penalties as the persons or corporations liable for the work for which he has contracted, and he is

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their surety for all damages, penalties and costs which they may be called upon to pay, in default of the work being executed.

791. Every person bound to perform, on municipal roads or side-walks, work required by the provisions of the law and of the *procès-verbaux* or by-laws which regulate such roads or side-walks, is responsible for all damages resulting from the non-execution of such work, in favor of the parties interested or of the corporation, or of any municipal officer, when such damages have been exacted from them, and is further liable to a penalty of from one to four dollars for each day that he refuses or neglects to perform such work.

Decision. — **The proprietor of a front road who neglects to mark it by means of balizes according to the provisions under art. 832, M. C. may be fined under art. 791 M. C.** *Débussat* **vs** *Larose*, **5 O. R ; S. C. 427.**

792. Every person who, without reason or authority, cuts, mutilates, or injures any trees planted or preserved for ornament on any municipal road, or any posts, inscriptions, works, or articles forming part of, or connected with any municipal road, is responsible for all damages occasioned thereby, and further incurs a penalty of not less than two nor more than five dollars.

793. Every corporation is bound to cause the roads and side-walks under its control to be maintained in the condition required by law, by the *procès-verbaux* and by the by-laws which regulate them, under a penalty not exceeding twenty dollars for each infraction thereof.

Such corporation is further responsible for all damages resulting from the non-execution of such *procès-verbaux*, by-laws, or provisions of law, saving its recourse against the officers or rate-payers in default.

If the road is under the control of several county corporations, such corporations are jointly and severally bound to cause such road to be maintained in the required condition, under the same penalty and responsibility.

But no suit shall be taken against any such corporation, without fifteen days' notice of such suit being given in writing to the secretary-treasurer of the corporation, which notice may be given by registered letter, and shall be at the cost of the person giving it.

If the suit is taken in the name of a person who is not a rate-payer of the municipality, he must deposit ten dollars with the clerk of the court on the issue of the summons, to guarantee the costs.—R. S. Q. 6169.

Decisions.—(*a*) **In a popular action, there is no necessity to state in the declaration, that the affidavit required under the statute of Canada of 1864, 27 and 28 Vic., ch. 43, s. 1. has been fyled with the** *præcipe*.

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(*b*) In an action for penalty against a corporation for negligence to maintain the roads there is no necessity to allege in the declaration that such roads are situated in the municipality of the parish, and are under the control of the Defendant, when the Plaintiff states in what parish the part of the road which was in bad order is situated.

(*c*) Municipal corporations are liable to the penalty under art. 793 M. C., for the bad order of a municipal road which the proprietors are bound to maintain, even if the inspector neglects to give notice under art. 399 M. C. or, if no by-law under art. 535 has been enacted. There is no necessity that an action for the penalty be issued against the proprietors. C. C. *J. Paré* vs *Corporation of St. Clément.* 5 R. L. 428.

2. Under art. 793 of the Municipal Code a corporation may be fined, if it neglects to keep roads and bridges in order as required by law, *procès-verbaux* or by-laws.

The obligation under article 793. M. C. is a duty of oversight, and it is not limited to cases where a by-law has been passed under art. 535.

When a bridge build by government over a river situated in the municipality, has been carried away by floods, the corporation is not liable to be fined for neglecting to rebuild it. If the bridge had been built by resolution of municipal authority, and then destroyed, the corporation would be guilty of negligence, for neglecting to reconstruct it. C. C. *Giguère* vs *Corporation of township of Chertsey.* 5 R. L. 285.

3. A municipal corporation is responsible for all damages resulting from the bad condition of the roads in the limits of the municipality. *Gaudet* vs *Corporation of Chester West.* C. C. 1 R. L. 75.

4. In an action for damages resulting from an accident due to the bad condition of the roads, the court will consider the difficulties in keeping roads in good order owing to stress of weather, and the season of the year. C. Q. B., *Corporation of township of Douglass and Maher.* 11 Q. L. R. 294 ; 14 R. L. 45 ; *Beaucage and Corporation of Deschambault.* C. Q. B. 14 R. L. 665 ; *Lulham* and *Corporation of Montreal.* C. Q. B., 29 L. C. J. 18.

5. A corporation is responsible for damages resulting from the lack of a fence along a by-road open by virtue of a *procès-verbal. Dufresne* and *McCrea.* C. Q. B., 13 R. L. 606.

6. A municipal corporation is not responsible for damages when it has neglected to open a road ordered under a by-law. *Baldwin* vs *Corporation of Barnston.* 17 R. L. 338.

7. A municipal corporation is responsible for damages caused by the bad order of a side-walk when it has neglected to use ordinary and reasonable care. *Biggins* vs *City of Montreal.* S. C. 29 L. C. J. 26 ; *Grenier* vs *The Mayor, etc., of Montreal.* C. Q. B. ; 21 L. C. J. 216.

8. A municipal corporation, responsible for damages, on account of bad order of the side-walk, has a recourse in guarantee against the proprietor who is bound to keep the side-walk in good order. *Guillaume* vs *City of Montreal.* S. C. 3 L. N. 406.

9. A county municipality declaring a local by-road to be a county road, is bound to maintain it. The municipality is responsible under art. 793 if it neglects to keep it in good order. *Huot* vs *Corporation of County of Montmorency.* 2 Q. L. R. 253.

10. If a person falls upon a side-walk owning to its bad order, the municipality is responsible for damages. S. C. R. *Jodoin* vs *City of Montreal.* 11 R. L. 434.

11. In an action for damages against a municipal corporation, under

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article 793 it is not necessary to point out the precise spot on the road where the accident occurred nor the name of the owner of the neighboring lot. C. Q. B. Quebec, 6 march 1877. Monk J., Ramsay J., Sanborn J., and Tessier J., *Patrick*, appellant, and *Corporation of L'Avenir*, respondent. 9 R. L. 321.

12. A municipal corporation is responsible for damages caused by the bad condition of the streets, and it is not necessary to prove that the corporation has been notified of the same. C. Q. B. *Kelly* and *Corporation of the City of Quebec.* 10 Q. R. L. 70.

13. A municipal corporation which employs the ruins of burnt houses to repair its road, is responsible for the death of a horse which resulted from a nail found to be in those ruins. S. C. *Bernier* vs *Corporation of Quebec.* 11 Q. L. R. 79.

14. The wife of the Plaintiff, walking through the market place of the City of Quebec, stepped on a plank in the floor of the market. The plank broke and struck her in the face, inflicting bruises for which she claimed damages. It appears that the clerk of the market used to visit the market several times a day to examine its condition, and he observed nothing wrong, but it was found that the plank was rotten underneath.

Held :— That the defect in the plank was a latent defect of which Defendant had never received notice ; that the damage suffered by Plaintiff was the result of an accident, which could not be attributed to the neglect of the Defendant, and the action was dismiseed. S. C. *Kelly* vs *Corporation of the City of Quebec.* 3 Q. L. R. 379.

15. A municipal corporation is responsible for damages caused by the bad order of a road, only when it could have prevented the cause of those damages. *Walsh* vs *The City of Montreal.* 5 O. R ; S. C. 208.

16. It is a culpable neglect in a corporation, to leave an open space surrounding the opening of an underground passage, without protecting the public by way of railings ; and if an accident happens, through such neglect, the corporation will be responsible. S. C. R. *Brault* vs *Corporation of Quebec.* 10 Q. L. R. 291 ; 8 L. N. 48.

17. The Plaintiff who sues a municipal corporation for a penalty under this art., must prove that he has given ten days' notice required by the amendment under 45 Vic. ch. 35. s. 26 C. C. *Perreault* and *Corporation of the parish of St. Esprit.* 12 R. L. p. 148.

18. The notice required under this article does not refer to actions in damages, but only to actions to recover the fine of $20.00.

If the corporation has not pleaded the default of notice, it cannot be pleaded at the hearing of the case. *Corporation of the township of Douglas* vs *Maher.* C. Q. B. 11. Q. L. R. 294 ; 14 R. L. 45. *Laurier* vs *Corporation of Sault au Récollet.* C. C. 7 L. N. 318 ; *Turner* vs *Corporation of St. Louis du Ha! Ha!* S. C. 16 Q. L. R. 260 ; *Bibeau* vs *Corporation of St. François du Lac.* C. C. 17 R. L. 704.

19. A municipal corporation is responsible for damages caused to a proprietor, when it changes the level of the street. *Turgeon* vs *City of Montreal.* 1 M. L. R. ; S. C. 111 ; C. C. *Bransdon* vs *City of Montreal,* 12 R. L. 610.

20. An action in damages lies against a municipal corporation by the proprietors along a street, when in lowering level of the street, the corporation has intercepted the approach near the houses on that street. C. Q. B. *Morrison,* appellant, vs *The Mayor et al. of the City of Montreal,* respondents ; 25 L. C. J. 1.

21. A municipal corporation which causes work to be done on a front

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road which a proprietor should have done and such work necessarily changes the level of the road causing damage to the proprietor is not then responsible. C. Q. B. *Plante* vs *Corporation of St. Jean de Matha.* 1 O. R.; C. A. 189.

22. A proprietor has a right to claim damages on account of the levelling of streets, only when the levelling has been done in front of his property. The levelling in front of his neighbor is not sufficient to justify his claim. S. C. *Mercantile Library Association* vs *Corporation of Montreal.* 2 R. C., p. 107.

23. An action lies in favor of a municipal corporation against a railroad company, for damages caused to a bridge of the corporation by the works of the Company. C. Q. B. *Corporation of Tingwick* vs *Grand Trunk Co.* 9 R. L. 346.

24. An indictment lies against the corporation of a rural municipality, for not having repaired the road, although a front road; and notwithstanding that the proprietors along the road were obliged to maintain it. In such a case the court has not the right to order the suing party to pay the costs. C. Q. B. *The Queen* vs *Corporation of the parish of St. Sauveur.* 3 Q. L. R. 283; 1 L. N. 180.

25. A local corporation cannot be condemned to make, within three months, and under a penalty of $1,000 a road ordered by a county council; the penalty under this article is the only punishment the corporation can incur by its default. *Bothwell* vs *Corporation of the parish of Wickham west.* S. C. R; 6 Q. L. R. 45.

26. A notice of eight days, and a deposit of ten dollars are required when civil actions are instituted against municipal corporations on account of the bad state of their roads. *Laurin* vs *Corporation of parish of Sault au Récollet.* C. C. 7 L. N. 318.

27. No action lies for *quantum meruit* against a municipal corporation for works done in its road. *Boutelle* vs *Corporation of Danville.* C. C. 6 R. L. 2.

Vide infra, No 50.

28. The right given to a corporation by the legislature to do certain things, does not exempt it from paying damages it may incur in so doing.

29. A municipal corporation is not responsible for damages caused by necessary works, if no neglect is proven. Nor is it responsible in damages for omitting to open a drain in a street where there was never any drain previously. *Riopel* vs *City of Montreal.* 3 L. N. 320.

30. A municipal corporation which causes a municipal and public road to be closed and obstructed, the said road having been open for over twenty years, and being a front road upon a concession will be responsible towards the proprietors along that road for damages they may suffer. *Corporation of township of Ireland* vs *Larochelle.* 13 R. L. 696.

31. The obligations under art. 793 extend to all the roads under the control of acorporation, also the roads open for the benefit of a neighboring municipality.

The rule which obliges the inhabitants of a superior range to maintain the by-road which leads to their range, does not apply if the by-road and range are in the same municipality. *Dubois* vs *Corporation of Ste. Croix.* C. C. 1 Q. L. R. 313.

32. Notice of action under this article is required for actions to recover the penalty of $20.00 and also for actions in damages arising for want of execution of *procès-verbaux.*

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But this notice is not a matter of public order and the Corporation Defendant can waive this formality if not alleged in its pleas. *Charron* vs *Corporation of parish of St. Hubert.* 16 R. L. 490; 32 L. C. J. 304 4 M. L. R. 431.

33. A corporation is responsible for damages caused by fire-works which it has allowed. *Forget* vs *City of Montreal.* 4 M. L. R., 77.

34. All actions in damages against a corporation of a city or a town, on account of the bad condition of its roads are prescribed by three months. R. S. C. ch. 85, S. 3. *Hunter* and *City of Montreal*, 12 L. N. 87; *Corporation of Quebec* and *Howe.* 13, Q. L. R. 315. *Corporation of Sherbrooke* and *Dufort.* 34. L. C. J. 76.

35. Fifteen days' notice must be given to a municipal corporation before suit for neglect to maintain its roads and water-courses in good order. Such notice is required even if to the action is added a claim for damages. *Senécal* vs *Corporation of St. Bruno.* 6. M. L. R., S. C. 338.

36. The law under 55-56 Vic. ch. 60, s. 5, requires that the side-walks in the streets of Quebec be made and maintained by each owner of real estate in front of which they are laid. Held: that an action in damages, against the city, caused by the bad order the side-walk is not well founded in law and an action in guarantee by the city against the proprietor in default will be dismissed. *Seguin* vs *City of Quebec.* 3. O. R.; S. C. 23.

37. When there is no proof of pecuniary damage, no consolatory (solatium) damages will be granted for the lost of a relation killed by accident, caused by bad order of a road. *Labelle* and *City of Montreal.* 2. M. L. R.; S. C. 56; 15 R. L. 474; 14 S. C. R. 714; Cassell's Digest 222.

38. Municipal corporations are responsible for damages caused by accident on a bridge, though not a public one but which is so considered. C. Q. B. *Corporation of Eton* and *Rogers.* 1 R. C. 476.

39. When a side-walk has constantly been maintained in good order and the accident occurred on account of the melting of snow, and the declivity of the street, the corporation is not responsible. *Foley* and *City of Montreal.* 2. O. R.; S. C. 346.

40. A corporation which allows the public pass through a private lane placed drains and numbered the houses, is responsible for an accident caused by bad order of the side-walk therein. *Gilligan* vs *City of Montreal.* 2. O. R., S. C. 405.

41. When a corporation has neglected to keep a street in good condition during the winter it cannot plead irresponsibility for an accident by alleging that the street became dangerous by the sudden melting of snow. *White* vs *City of Montreal.* 2. O. R., S. C. 342.

42. A municipal corporation is responsible when the planks of the side-walks are not properly nailed. It is not sufficient to cause those side-walks to be examined now and then. Passers by are entitled to walk over them constantly without danger. *Mills* and *Corporation of town of Côte St. Antoine.* 2 O. R., S. C. 262.

43. By 16 Vic. ch. 100. s. 3, a railway company was allowed to build its road in certain streets of Quebec with the consent of the corporation, in such way as to protect the citizens and their property from damages.

The Corporation of Quebec granted the right to build the road in a street where plaintiff was proprietor; he claimed damages. Held that the corporation was not responsible. *Renaud* vs *City of Quebec.* 8 Q. L. R. 102; 19 R. L. 590. Ramsay's Appeal Cases 472.

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44. When a municipal corporation permits children slide on the streets it is responsible for damages resulting therefrom. *Beauport* vs *Corporation of Coaticook.* S. C. R. 32 L. C. J., 118.

45. The corporation of the City of Montreal is responsible for damages caused by firemen going to fire at too great a speed without warning bells. *Gadbois* vs *City of Montreal.* 5 M. L. R., S. C. 43.

46. A corporation is responsible for damages caused by a triumphal arch erected in a municipal road, though the corporation has not contributed to the erection of it. *Vanasse* vs *City of Montreal.* 16 R. L. 386.

47. If corporations are obliged to take good care of side-walks and during winter to keep them in good order, to prevent dangers that may occur on account of the climate the passers-by are also obliged to be cautious. And when an accident is ascribed to the imprudence of a person who took the risk of walking upon a slippery side-walk without rubbers or cramp-irons, no damages will be granted against the corporation. *Morris* and *City of Montreal.* 3 O. R ; S. C. 342. Davidson J.

48. When the bad condition of the street is due to climatic causes that the municipal corporation could not reasonably prevent, it is not responsible for damages arising therefrom especially if the damage could have been avoided with ordinary prudence. *Corporation of Sherbrooke* vs *Short.* 15 R. L. 283.

49. The road inspector of the division in which the road is can recover from the municipality which has the control of this road, the penalty imposed under article 793 of municipal code for neglecting to keep it in good order especially when it appears that the bad order of the road cannot be imputed to the fault for neglect of the Plaintiff.

The corporation can release itself from such penalty by proving that it exercised due diligence to keep the road in good order and no blame can be imputed to it for its bad order. *Leroux* and *Corporation of St. Marc.* 10 O. R ; 297. Champagne J.

50. When the fifteen days notice required under art. 793. M. C. has not been given in an action instituted against a municipal corporation for an accident caused by the bad order of the road, it affects the demand not the right of action and it must be pleaded by *exception à la forme* and not by *défense en droit.*

2. Nevertheless when plaintiff desires to contest the right of fyling such *défense en droit* ,contestation must be fyled within four days after such pleading. After that delay Plaintiff is forclosed from contesting. C. C. P. 138.

3. The notice of action required under art. 793 of M. C. must be given for all actions. *Gauthier* vs *Municipality of village of Mile End.* 9 O. R. S. C., 453. Mathieu J.

The works done in a water-course crossing two parishes of the same county are county works. Such works ought to be done according to the provisions of the *procès-verbal ;* otherwise no action lies against the county council to recover the cost thereof. *Gravel* and *Corporation of Laval County.* 3 Rev. de Jur., 479 S. C. Loranger J.

51. A municipal corporation is not responsible for an accidental fall of a passenger on a side-walk if it has shown diligence in the removal of snow, etc., and no negligence is shown.

Drivers of vehicles should exercise greater caution in going through streets after a snow-storm than in ordinary weather. *Trudeau* vs *City of Ste. Cunégonde.* 7 Rev. de Jur., p. 260.

52. A person injured by a fall on a side-walk, who neglects to procure the services of a competent surgeon at once, will be held responsible for

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contributory negligence if the injuries become permanent. *Blanchet* vs *City of Montreal.* 7 Rev. de Jur., 262.

53. A municipal corporation in the execution of works under its control, should only be called upon to exercise a reasonable care as regards the safety of its employes.

Where a workman was killed in consequence of a stone falling upon him from the side of a trench through ground known as hard pan. it is to be attributed to *force majeure* and not to the carelessness of the corporation. 6 Rev. de Jur., 342. Lynch J.

(Reversed in Review and judgment for $3,000. This was confirmed in Appeal June 1900 and is now before the Supreme Court).

54. If art. 793 applies to actions of damages against municipal corporations (on which point the court expressed doubt) it is sufficient that the notice be plain and ordinarily intelligible and as, in the present case. the notice was understood by the secretary-treasurer, it was held to be sufficient.

The fact that a public road has for many years been left in a defective condition, owing to a projection of a rock thereon, thus forcing vehicles to make a turn which otherwise would be unnecessary, constitutes negligence.

But if plaintiff is grossly imprudent and does not exercise ordinary care his claim for damages will not be maintained. *Davignon* vs *Corporation of Stanbridge Station.* 14 Q. O. R., 116 S. C.

55. The notice required by this article ought to be given in an action for damages as well as in an action for penalty. *Hamel* vs *Corporation of Ste. Emelie.* 7 Rev. de Jur., 318.

56. Where an action in virtue of art. 793 was taken by one who was not a rate-payer in the municipality and without the deposit of $10 mentioned in the last line, the Court may nevertheless, in its discretion permit plaintiff to make such deposit even after contestation on payment of costs occasioned by such default and the right to defendant to plead again if desired. *Paterson* vs *Corporation of Nelson.* 7 Rev. de Jur., 211.

57. The deposit of $10 is exigible both in actions for damages and actions for the recovery of penalties. *Ouellet* vs *Corporation of St. Arsène.* 7 Rev. de Jur., 465.

In same sense. *Hamel* vs *Corporation of Ste. Emelie.* 7 Rev. de Jur., 318.

794. Every local council, whenever a by-law or resolution is passed in virtue of articles 526 or 527, or every municipal council, whenever a petition has been laid before it by one or more persons interested in the construction, opening, widening, alteration, divergence, or keeping in repair of any road which either is or ought to be under its control, praying that the work to be performed upon such road be settled and determined, must without delay :

1. Call together at one of its sittings, by public notice, the rate-payers interested in the projected work, and if, after hearing them, the council is of opinion that such work should be performed, make a by-law to settle, determine and apportion the work on such road ;

2. Appoint a special superintendent, whose duty it shall be to visit the places mentioned in the by-law, resolution or petition, and

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to report to the council and to draw up a *procès-verbal* if necessary, within the delay which the council fixes.—R. S. Q. 6170.

Decisions.—1. The omission, in a resolution appointing a superintendent for the opening of a road, of the date when the superintendent should make his report is not fatal. *O'Shaugnessey* vs *Corporation of Ste. Clotilde d'Horton.* S. C. R., 11 Q. L. R. 152; 8 L. N. 233.

2. A County council has not the right to have a *procès-verbal* made for a county road without a petition therefor from the interested parties. The right to proceed *proprio motu* in such matters belongs solely to local councils. C. C. Quebec. *Jobin* vs *Corporation of Quebec County.* 14th February 1888. Andrews J.

3. A by-law for the construction of a side-walk, which has not been preceded by the notice required under art. 794 is null and void. *Dupuis* vs *Corporation of St. Charles.* 1 O. R; S. C. 199.

4. The proceedings of the county council and of the local council, are limited to rejecting, confirming or amending a *procès-verbal* made by a special superintendent.

They have no right to take the initiative and to draw up a *procès-verbal* upon the refusal of the superintendent to do so. C. C. *Larin* vs *Rabouin.* 1 R. L. 687.

5. When a petition to open a road has been dismissed by a local council, the remedy to be adopted is mentioned in the M. C. A *mandamus* will not lie. *Suitor* vs *Corporation of Nelson.* S. C. R; 14 Q. L. R. 11.

6. A county corporation has no jurisdiction to appoint a special superintendent and order a *procès-verbal* to be drawn up for a water-course, entirely situated within the limits of a local municipality.

Such appointment belongs to the council of the local municipality.

If a *procès-verbal* is drawn by a superintendent illegally appointed and works are executed in virtue of such *procès-verbal*, the contractor of the works will have no recourse against the county municipality nor against the local municipality. *Dagenais* vs *Corporation of County of Huntingdon.* S. C. R. 20 R. L. 374.

7. A superintendent has no recouse against the corporation which appoints him if by its resolution appointing him, the corporation has declared that the proceedings would be executed at the cost of the interested parties, and if after homologation of the *procès-verbal*, it has taxed the costs and has declared these costs to be payable to interested parties even though no apportionment was ordered nor payment demanded by the corporation. *Batchelor* and *Corporation of township of Stanbridge.* S. C. R., 21 R. L. 382.

8. When a county council, by appointing a special superintendent, gives him limited instructions which really deprive him of liberty of action and give him but an illusory right, the *procès-verbal* and the apportionnement drawn by such superintendent, as well as their homologation will be declared null and void upon petition by the interested parties. *Bouchard* vs *Corporation of Dorchester.* 7 O. R; S. C. 473. Larue J.

9. When the keeping in repair of a by-road in a local municipality is to be paid by the rate-payers of a local municipality situated in an other county, the petition to modify the mode of maintenance of such by-road should be addressed to the county council, of which the municipality bound to maintain it forms part; and the council, without any further procedure, should refer the matter to the board of delegates. The board should then call a meeting of the interested parties by public notice, stating the object of the meeting. After hearing the parties the dele-

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gates appoint a superintendent; and the latter must also give notice of his visit to the interested parties, mentioning the purpose thereof.

2. The county council which has received the petition cannot appoint the superintendent.

3. The superintendent appointed by the delegates should send his report to the secretary of the council who received the petition and it is then submitted to the delegates. *Corporation of Ste. Agathe and the board of delegates of Mégantic* and *Lotbinière counties.* 12 O. R; S. C. 451. Casault J. *Vide* arts. 805 and 806.

10. A resolution homologating a *procès-verbal* will be set aside, if the special superintendent has not been appointed according to art. 794 M. C. after a by-law or a resolution ordering the works, has been passed, or after a petition from the interested parties. *Monpas* vs *Corporation of St. Pierre les Becquets.* 3 Rev. de Jur., 18 S. C. Bourgeois J.

11. If the special superintendent is of opinion that a petition asking for certain works ought not to be granted, he should make a report to that effect; if his opinion is favourable he is justified in making a *procès-verbal.*

It is sufficient if the nature of the works asked for appears from the body of the petition though not in its conclusions. *Piché* vs *Corporation County of Portneuf.* 17 Q. O. R., 589 S. C.

12. Upon a petition for the opening of a road, a municipal council appointed a special superintendent to visit the locality and to act upon the petition.

Held: — That the council could not give formal instructions to have the road placed in a particular route.

Illegalities may always be invoked before the Superior Court notwithstanding articles 100 and 708 C. M. *Dureault* vs *Corporation of Tingwick.* 6 Rev. de Jur. 79.

13. The Board of Delegates has no power to appoint a special superintendent.

This power, in the present case, belonged to the county council and the proper procedure was for that council to name the special superintendent and to submit his *procès-verbal* to the board of delegates.

The superintendent exceeded his powers in declaring a bridge to be local. *Corporation of La Visitation du Sault au Recollet* vs *The Corporations of Hochelaga and Jacques-Cartier.* 17 Q. O. R., 69 C. C.

795. Any rate-payer may be made liable for any work on a front road or by road, by a *procès-verbal* or a by-law made under and by virtue of the article 794, in proportion to the property he holds or occupies, subject nevertheless to the proviso contained in the article 782.

795*a*. If it concerns a front road of two ranges, the municipal council may pass a by-law to divide such road across for the purpose of maintenance, so that each proprietor or occupant of land shall keep the whole width of the road upon one half of the breadth of his land, except in cases where the nature of the soil or other obstacles shall render such division unjust; and in default of agreement between the parties interested respecting such division, the road inspector of the division, upon request of one of the parties, makes the division himself.—R. S. Q. 6171.

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CHAPTER SECOND

MODE OF DRAWING UP A "PROCÈS-VERBAL" AND THE ACT OF APPORTIONMENT WHICH RELATES THERETO

SECTION I.—OF THE "PROCÈS-VERBAL"

796. The special superintendent having taken the oath as such officer, must convene hold, and preside over a public meeting of the rate-payers interested in the proposed work, on the day, and at the hour and place which he has fixed, and whereof he has given public notice.

Every rate-payer interested and present at such meeting is entitled to be heard.

The special superintendent may, at any time after the public meeting of the rate-payers interested in the proposed work, go to the domicile of the said rate-payers, to require from them all the information he may deem necessary, and specially the real value, the extent and official number of the lot by reason whereof each rate-payer is subjected to the proposed work.—52 Vic., ch. 54, s. 17 ; 52 Vic., ch. 51. s. 8.

Decisions. — 1. A *procès-verbal* drawn by a superintendent who has not been sworn is void. *Beaudry* vs *Beaudry*. C. C. R. L. 93.

2. A *procès-verbal* is illegal if the special superintendent does not inspect the localities and works for which he is to draw up a *procès-verbal*, or if he neglects to take cognizance of the orders and *procès-verbal* to which he refers in his report and which he has amended by his own *procès-verbal*.

Such *procès-verbal* is illegal if it is proven that the *procès-verbaux* and orders that the superintendent desires to be amended have not been executed according to their provisions and that serious injustice may result to interested parties. *Duteau* vs *Marier*. 3 Rev. Jur., 210. C. C. Charland J.

797. If the special superintendent is of opinion that the work in question should not be undertaken, he mentions in his report the reasons for such opinion. If, on the contrary, he is of opinion that such work should be performed, he draws up a *procès-verbal* in accordance with the provisions of this section.

Decisions. — 1. A report made by a special superintendent appointed to decide as to works, in the following terms ; "that he believes he had no right to give any orders upon that subject", must be considered a refusal from him, as he does not comply with the provisions of section 45 of the revised Municipal act, which requires that the superintendent act or draw a *procès-verbal* or if he thinks proper to refuse the works asked for ; in this last alternative he must give the reasons of his refusal. The homologation of such report by the local council is null and void, and gives no right of appeal, to the county council. *Laing* vs *Rabouin*. S. C., 1 R. L. 687.

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2. When a special superintendent makes a report to the council that certain work should be done, without drawing up a *procès-verbal*, and afterwards is ordered by the council to draw up one which he does, this double procedure is not a cause of nullity, but merely a question of costs. *O'Shaughnessey* vs *Corporation of Ste. Clotilde of Horton.* S. C. R; 11 Q. L. R., 152.

3. A *procès-verbal* which does not mention the name of the person who is to survey the work is not a cause of nullity, it being a local road, and included in the road divisions (art. 555 M. C). which are under the care and control of the inspector. *O'Shaughnessey* vs *Corporation of Ste. Clotilde of Horton.* S. C. R; 11 Q. L. R., 152.

4. An action *en complainte* and for damages instituted against a special superintendent must be preceded by the notice mentioned under C. C. P. 22. *Hough* vs *The South part of township of Ireland.* C. Q. B; 13 R. L., 581.

5. A municipal council has not the right to draw up a *procès-verbal* nor to dictate its provisions to the special superintendent. The *procès-verbal* must be the work and the expression of the free opinion of the special superintendent. *Lapointe* vs *Corporation of County of Berthier.* 10 O. R; S. C., 24 Q. B.

798. The council, at the expiration of the delay within which such report should be made, in the event of its not having been made, or after having received the report of the special superintendent, whenever the latter is of opinion that the work should not be undertaken, may either provide such officer with new instructions, and order him to prepare, within a fixed delay, a *procès-verbal* in accordance with the provisions of this section, or appoint another special superintendent in his stead.

799. Every *procès-verbal* must indicate:

1. The situation and description of the work to which it relates;

2. The work to be performed, and the delay within which it must be performed;

3. The taxable property of the owners or occupants bound to perform work or to contribute to its performance;

4. The proportion of work to be performed by each rate-payer, if the nature of the work admits of it, whenever the work must be done by the rate-payers themselves;

5. The person under whose superintendence such work must be executed.

Decisions. — 1. A *procès-verbal* which orders that a municipal road follow the direction of a rail-road running to North East "until the most convenient spot to make the crossing is reached and which does not indicate the locality of the work to which it relates will be held null and void. *Bothwell* vs *Corporation of Wickham West.* 6 Q. L. R., 45.

2. A *procès-verbal* which affects works already made by compelling rate-payers to contribute to those works who were not called upon by the first *procès-verbal* which ordered those works is *ultra vires* and void; the rate-payers can only be called upon by *procès-verbal* to

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contribute to works to be done, not for works already done. *Corporation of parish of St. Telesphore* vs *Marleau.* 30 L. C. J., 249.

3. When the works upon a county road are not chargeable to the county corporation, the county council must indicate the taxable property belonging to owners who will be chargeable for the works done thereon. It cannot impose those works on a local corporation, and give to said corporation authority to assess each rate-payer of the local municipality proportionately for them. The County council only can make such apportionment. Thus, a *procès-verbal* homologated by a county council, and imposing upon a local municipality work upon a county road, without indicating the taxable property of the owners bound to contribute thereto is illegal and will be set aside. *Corporation of the parish of St. André Avellin* and *Corporation of township of Ripon.* 4 O. R : Q. B. 167 ; Rev. de Juris., 315. *Vide Corporation of township of Granby* and *Corporation of Shefford County,* under art. 758 and 938.

4. *Procès-verbal* of water-courses. *See* art. 887.

5. A *procès-verbal* is not void if it does not contain the provisions as to the expropriation of property through which the road referred to in a *procès-verbal* will run. *Corporation of Ste. Louise* vs *Chouinard.* 5 O. R ; Q. B. 362.

800. If a front road is in question, and if all the work upon such road be imposed upon the owners or occupants of the lots fronting on such road, the indication of such lots in the *procès-verbal* is not required.

801. If any front road is in question, and that owing to peculiar circumstances the work to be done upon such road, by any owner or occupant, exceeds by more than one-half the average of the work to be done upon the same road by owners of lands of equal value, such owner or occupant may be, in and by the *procès-verbal,* exempted from a part of the work upon or of the cost of such road ; and such parts of the road, described in the *procès-verbal,* is considered as a by-road. Such front road shall not be longer than twice the width of the land of which it is the front road ; any excess thereof being considered and maintained as a by-road ; and the *procès-verbal* or by-law shall in no case derogate from the provisions of article 825 of this code.—R. S. Q. 6172.

802. It may be further ordered by any *procès-verbal* :

1. That every bridge or other work forming part of the works upon a road be constructed of stone, brick or other material of certain dimensions, and according to plans and specifications annexed to the *procès-verbal,* and which may be amended by the proper council or board of delegates ;

2. That fences, hand-rails and other protections be placed at the side of any road where it passes near, or borders upon any precipice, ravine, or other dangerous place ;

3. That any part of a road, through a swamp or wet ground, be

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made in whole or in part with fascines or pieces of square timber, according to the mode of construction determined upon ;

4. That any road be or be not raised in the middle ;

5. That any specified kind of materials be or be not used in making or repairing such work ;

6. That, if a road pass through uncleared land, the timber on each side of the road be cut down by the owner or occupant of such land, or by the persons bound to perform the road work, for the space of twenty feet from each fence, unless such trees are fruit trees, or maple or plane trees, forming part of a maple grove, or are reserved for ornament to a property ;

7. That the work be performable from the date of the coming into force of such *procès-verbal*, without it being necessary to draw up a deed of apportionment ;

8. That works of building or repairing be not performed by the rate-payers themselves, but be done by contract at their expense, and that for such purpose they be, after public notice, adjudged publicly at auction to the last and lowest bidder, offering sufficient security for the execution of the same.

Decision. — Municipal councils have not authority to leave to the discretion of an inspector the necessary expenses for the construction of side-walks ; but must order the work to be done by the rate-payers or have it done by public contract. ***Dupuis*** **vs** ***Corporation of St. Charles.*** **1 R. O ; S. C., 199.**

803. Every *procès-verbal* may in addition determine the general mode of construction or repairing the road and works connected therewith.

804. The special superintendent must deposit the *procès-verbal* and report drawn up by him, in the office of the council by which he was appointed, within the delay fixed by article 794, or by the council in the case of article 798.

805. If it appears to the secretary-treasurer of the council at the office of which such *procès-verbal* and report have been deposited, that the work to be performed is work falling within the jurisdiction of another council, he must without delay transmit the *procès-verbal* and all the proceedings connected therewith, to the office of the council to which they belong, for examination and homologation by such council, or by the board of delegates, as the case may be.

If the work in question comes under the jurisdiction of more than one county corporation, the *procès-verbal* and proceedings connected therewith must be transmitted to the office of the council of the county municipality in which the work was originally proposed, to

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be afterwards submitted to the board of delegates of the counties interested.—R. S. Q. 6173.

Decision. — This article does give the local council the right to begin work which at first seemed to be and actually was under the jurisdiction of a county council, by appointing an inspector and making a *procès-vercal*, *Brunet* vs *Brault*, 14 R. L., 692.

806. The council or the board of delegates concerned may, at any time after the deposit of the *procès-verbal* has been made at the office of the council under either of the two preceding articles, homologate such *procès-verbal*, with or without amendments, or reject the same ; provided that public notice has been given by the secretary-treasurer of the council or by the secretary of the board of delegates, to the parties interested, of the time and place at which the examination of such *procès-verbal* is to commence.

Every person interested is entitled to be heard by the council or by the board of delegates, at the time appointed for the consideration of such *procès-verbal*.—R. S. Q. 6174.

Decisions. — 1. The proceedings of a municipal county council, concerning the homologation of a *procès-verbal*, will not be set aside owing to the absence of a member of the municipal corporation elected after the notice caling the meeting was issued, such notice having been served upon his predecessor, if it appears that no injustice has resulted and if it also appears from the minutes of the meeting of the council that all the members then in office were served with the notice of the convocation of this special meeting. Moreover if the interested parties who do not take advantage of the irregulaity before the country council, and contest the *procès-verbal* upon its merits they are deemed to have waived their objections ; and cannot afterwards take advantage of it by writ of prohibition.

An party interested in a *procès-verbal* who does not take advantage of the irregularity of the appointment of a special superintendent, at the general meeting where the *procès-verbal* is to be homologated, cannot afterwards plead that objection by a writ of prohibition. *Lacombe* vs *Corporation of Hochelaga county*. S. C., 13 R. L., 611.

2. The notice required under this article, given on the 27th of August, that on Monday the 6th of September next, the council would proceed to the examination of the *procès-verbal*, is irregular, and renders void its homologation Monday not being the 6th but the 3rd of September, and the council having proceeded on the 3rd there was not the delay of 7 days required under article 238. A resolution of the council amending the *procès-verbal*, and ordering work to be charged to interested parties when the *procès-verbal* had declared them to be chargeable upon the municipality is equivalent to the homologation of the *procès-verbal* with such alteration. Notice subsequently served that this amendment would be taken into consideration by the council at a special meeting was not necessary. *O'Shaughnessey* and *Corporation of Ste. Clotilde*. S. C. R ; 11 Q. L. R., 152.

3. A county council cannot, under that article, by means of a resolution oblige the rate-payers of a local municipality to do works out of the municipality. C. C. *Corporation of Champlain County* vs *Levasseur*. 33 L. C. J.. 298.

As to homologation of the *procès-verbal*, the notice required under art. 806 M. C. must be particularly directed to the interested parties, and

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a special mention that the matter will be taken under consideration by the council must be made in such way as to draw the attention of the interested parties thereto; otherwise the council has no jurisdiction to homologate the *procès-verbal*. *Monpas* vs *Corporation of St. Pierre les Becquets*. 3 Rev. de Jur., 18, S. C. Bourgeois J.

5. A board of delegates has not the right to set aside a *procès-verbal* ordering a road to be made, when it is not in the interest of the majority.

The road existing since twenty years and being useful to certain rate-payers, the latter have acquired rights, and can have the *procès-verbal* homologated. *Corporation of Kingsey Falls et al.*, and *Caya et al.* 1 Rev. de Jur., 33 C. C. Plamondon J.

807. The municipal council or the board of delegates, in any decision on the merits of a *procès-verbal*, may tax the costs of the proceedings, and cause them to be paid by the parties interested, by the corporation, or by any other person in its discretion.

In the absence of a decision by the council or by the board of delegates, the costs incurred may be recovered from the corporation under the direction of which the special superintendent acted, saving its recourse against the petitioners who demanded the *procès-verbal*.

In case of refusal, such costs may be recovered in the same manner as penalties imposed by the provisions of this code.

Decisions. — 1. Defendants petitioned the council of the corporation of Hochelaga county, asking that a *procès-verbal* be made for the opening and maintenance of a water-course which (although the petition did not disclose the fact) traversed the two counties Hochelaga and Jacques-Cartier. The council agreed to the petition and named a special superintendent who, after having visited the localities and heard the parties, drew up a *procès-verbal* for the work asked for. This was submitted for homologation to the board of delegates of the two counties who after consideration quashed it with costs of the *procès-verbal* against defendants. The costs were taxed at the sum of $1200, and paid by the plaintiff who then demanded that sum from defendants.

Held: — That the decision of the board of delegates had the force of *chose jugée* as to costs and could not be revised incidentally in a suit for costs; that the council of the county had power to name a special superintendent and could not be held responsible for errors in proceedings requested and accepted by defendants: *Corporation County of Hochelaga* vs *Laplaine et al.*, 20 Q. O. R; 165 S. C., in review.

2. A municipal corporation which has appointed a special superintendent is obliged to pay his costs and fees. It cannot get rid of that obligation by deciding under art. 807 who are the interested parties who will have to pay those costs.

The superintendent can claim his costs by direct action against the corporation and the latter may collect them from the indebted parties. *Riel* vs *The Corporation of Lachine*. 6 O. R; Q. B., 467.

3. The Petitioners for the opening of a water-course are not jointly and severally responsible for the costs attending the rejection of a *procès-verbal* by a board of delegates. *Corporation of Hochelaga* vs *Laplaine et al.* 6 Rev. de Jur., 465.

808. The secretary-treasurer of the council, or the secretary of

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the board of delegates, is bound without delay to give public notice of the homologation of any *procès-verbal* made under the provisions of this section.

Decisions. — 1. The homologation, on Monday the 3rd September, of a *procès-verbal*, for the opening of a road, when the public notices were stating to the interested parties that it would be taken under consideration on Monday the 6th of September is void ; and it is also void when the delay of seven days between the public notice and the meeting of the chouncil at which it was homologated have not elapsed. S. C. R., *O'Shaughnessy* vs *Corporation of Ste. Clotilde of Horton.* 11 Q. L. R., 152.

2. In the same case, it was held, reversing judgment of S. C. Arthabaska, of the 18th April 1885, that a *procès-verbal* and an act of apportionment, cannot be executed, if the notice mentioned under art. 808, has not been given even although public notice of the deposit of the act of apportionment was given (art. 817 M. C.)

A person obliged under such *procès-verbal* and act of apportionment, can have it set aside, by direct action instituted after the three months delay from the notice given of the deposit of the act of apportionment even if such person has been sued twice for the payment of taxes imposed under said *procès-verbal* and act of apportionment, before his own action to have the same annulled.

In such a case, it is not necessary to take proceedings under arts 100 and 698 M. C1; these are not exclusive of other proceedings such as *certiorari*, prohibition, and direct action, when the *procès-verbaux* and the by-laws give the right to a municipality to sue a rate-payer. If that title is void or susceptible of being so declared the rate-payer is not obliged to wait until it has been executed before invoking its invalidity.

809. Every *procès-verbal* comes into force at the expiration of the fifteen days which follow the public notice given in virtue of the preceding article, unless an appeal has been taken, in which case the *procès-verbal* comes into force from the date of the final decision of the county council, or of the court before which the appeal has been brought. Every *procès-verbal* shall cease to be in force if the works thereby ordered be not performed within five years from its coming into force.—60 Vic., ch. 57, s. 7.

809*a*. If the works ordered to be performed by a *procès-verbal* or by a by-law in force become demolished or ruinous, or are likely to fall from decay, they may be repaired or rebuilt under such *procès-verbal* or by-law, by observing the formalities prescribed therein, or with modifications made by the council, if it has amended such *procès-verbal* or by-law.

The rebuilding or repairing of such work or works can however only be ordered by the council on the report of a municipal officer establishing that it is necessary to perform such work.—R. S. Q. 6175.

Decisions. — 1. When a *procès-verbal* of a water-course has been drawn up, and to ocmplete it, the council orders an apportionment, the report

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mentioned under art. 809*a* is not required. *Corporation of Maskinongé County* and *Grenier et al.*, S. C. R., 1 O. R ; S. C., 558.

2. Iron bridges substituted for wooden bridges. *See* art. 405.

810. Every *procès-verbal* in force may, at any time, be amended or repealed by another *procès-verbal* drawn up in the same manner, on petition by the parties interested or under the order of the council.—R. S. Q. 6176.

Decisions. — 1. A *procès-verbal* can be amended only by an other *procès-verbal* drawn up in the same manner. C. Q. B. *Holton* vs *Callahan*. 9 R. L., 665.

2. A *procès-verbal* can be amended only by an other *procès-verbal* drawn up in the same manner and any change that a municipal council may make to a *procès-verbal*, by means of a resolution is absolutely void and the invalidity can be invoked at any stage of the action. C. Q. B., *Holton* and *Aikins*. 3 Q. L. R., 289.

3. The provisions of a *procès-verbal* duly homologated and confirmed, must be executed and observed so long as they have not been duly replaced or set aside, and the interested parties cannot ask for anything else but what the *procès-verbal* contains. C. Q. B., *Lemire* and *Courchêne*. 28 L. C. J., 198.

4. A county council cannot by a resolution and without notice, amend or annul a *procès-verbal* ordering a public road already homologated by the council. *Allen* and *Corporation of Richmond*. S. C., 1 L. N., 63.

5. The amendment of a *procès-verbal* ought to be expressed and is not to be presumed. *Girard* and *Corporation of Arthabaska County*. C. Q. B., 16 R. L., 580.

810*a*. Every *procès-verbal* in force may, at any time, be amended by the council by by-law, on petition of one or more interested parties, or on the order of the council, provided that public notice be given by the secretary-treasurer of the council or by the secretary of the board of delegates, to the parties interested, of the place where and the time when the examination of the *procès-verbal* shall be begun.—R. S. Q. 6177.

Decisions. — 1. The functions of municipal councillors are administrative, legislative and judicial. Decisions given by them in their judicial capacity have the authority of *chose jugée*. *Corporation of Yamaska County* vs *Durocher*. 30 L. C. J., 211.

2. Decisions of a local council are not those of a Court of Justice and have not the authority of *chose jugée*.

When a petition to open a road has been dismissed by a local council, the remedy to be adopted is indicated by the M. C. and is not by writ of *mandamus*. *Suitor* vs *Corporation of Nelson*. 14 Q. L. R., 11.

The dispensation from making an act of apportionment ought to be express, it cannot be taken for granted nor implied. *Corporation of Ste. Marguerite* vs *Migneron*. 29 L. C. J., 227.

811. Any person may be declared liable for work upon any front road or by-road, under any *procès-verbal*, by reason of the taxable property which he owns or occupies, subject to the application of article 782.

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812. If the *procès-verbal* does not dispense with the making of an act of apportionment, the work required by such *procès-verbal* need not be performed by the rate-payers until an act of apportionment has been drawn up and comes into force.

813. A copy of any *procès-verbal*, homologated by a county council or a board of delegates, must be transmitted without delay to the office of the council of each local municipality, in which the road governed by such *procès-verbal* is situated either in whole or in part.

SECTION II.—OF THE ACT OF APPORTIONMENT

814. Within the thirty days next after the coming into force of any *procès-verbal*, the special superintendent must draw up and file at the office of the council in which the *procès-verbal* is deposited, an act of apportionment of the work to be done under such *procès-verbal*, unless an express provision of the *procès-verbal* dispenses with the same.

Decisions. — 1. An act of apportionment for work to be done, in virtue of a *procès-verbal*, is void, if it has been drawn up after the completion of the work. *Corporation of the parish of Ste. Brigide* and *Murray*. C. C., 14 R. L., 227.

2. When an act of apportionment has not been filed within thirty days according to the terms of this article, the work can be only executed upon a resolution or order from the council. *Tremblay* and *Leblanc*. C. C., 11 L. N., 162.

3. When a *procès-verbal* has been drawn up for a water course, and to complete it, the council has ordered an apportionment to be drawn up for those works, the report required under art. 809*a* is not necessary. *Corporation of Maskinongé County* and *Grenier*. S. C. R; 1 O. R; S. C. 558.

815. Every act of apportionment must indicate :

1. The work and the *procès-verbal* to which it relates ;

2. The work to be done ;

3. The taxable property by the owners or occupants of which such work must be executed ;

4. The proportion of the work which must be done by each of them ;

5. The amount of the contribution which must be given by them in money, labor or materials ;

6. The place and time in which, and the officers to whom, such contribution must be delivered.

816. If the special superintendent has not drawn up and filed the act of apportionment within the delay prescribed by article 814, the council in the office of which such act should have been filed may

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order such special superintendent or any other person to draw up or file the same within a fixed delay.

816*a*. Whenever the council so orders, a new act of apportionment may be made of the works ordered under an old *procès-verbal*, if the repair or rebuilding ordered by such *procès-verbal* is in question.—R. S. Q. 6178.

817. The act of apportionment comes into force fifteen days after it has been filed in the office of the council, provided that public notice of the filing thereof has been given within such delay.

Decision.—**The neglect to give notice of the deposit of the act of apportionment, does not make it void, but prevents it from becoming into force.** ***Côté* vs *Corporation of St. Augustin.*** **S. C. R ; 13 Q. L. R., 348.**

818. Every act of apportionment is annexed to the *procès-verbal* to which it relates. In the case of article 813, a copy thereof must be transmitted without delay to the office of the council of each local municipality in which the road is situated, either in whole or in part.

819. The council in the office whereof an act of apportionment is filed may amend such act on the petition of any rate-payer or road officer, after having given public notice to the parties interested, of the place, day and hour in which the consideration of the petition and the amendment of the act of apportionment are to be proceeded with, and after having heard any interested party who desires to be heard.

Every amendment to an act of apportionment comes into force fifteen days after the passing thereof, except in the case of an appeal, in which case the act of apportionment comes into force from the date of the final decision of the county council, or of the court before which the appeal has been brought.

820. No provision of any act of apportionment can be inconsistent with those of the *procès-verbal* to which it relates.

Section III.—General Provisions.

821. The contribution of each person liable for work on roads, in virtue of any *procès-verbal* or act of apportionment, is based upon the value of the taxable property by reason of which he is liable therefor, or according to the superficial extent of such land, according to the decision of the municipal council, as fixed by the valuation roll in force, if there is one, and if there is not, then, according to the valuation made by the special superintendent himself, saving the case mentioned in article 783.—52 Vic., ch. 54, s. 18.

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CHAPTER THIRD

OF PERSONS LIABLE FOR WORK ON ROADS IN THE ABSENCE OF A "PROCÈS-VERBAL" OR BY-LAW

SECTION I.—GENERAL PROVISIONS.

822. The provisions of this chapter, other than those enacted by article 825, apply only when there exist no *procès-verbal* or by-law specifying by whom the works on municipal roads are to be performed.—53 Vic., ch. 64, s. 2.

823. The burden of proving that any municipal road is not subject to the provisions of this chapter is always upon the party claiming the exemption.

SECTION II.—OF FRONT ROADS.

824. The front road of each lot is kept in repair by the owner or occupant of such lot.

Il a lot is possessed or occupied in portions, by two or more persons, such owners or occupants are jointly and severally liable for the work to be done on the whole of the front road of such lot, even in the case when the part of the lot possessed or occupied by them does not border upon the road, saving their recourse against each other in proportion to the value of the land occupied by each of them.

Decisions. — 1. The owner of a farm is personally responsible for damages caused by the bad order of his front road C. C. *Goupille* and *Corporation of township of Chester East.* 3 R. L., 3.

2. The stipulation to keep in repair a road in its entire width with the ditches and fences by the purchaser of a farm opposite that of the seller, is a real servitude; the work required under such servitude can be made by the owner of the burdened lot. A sheriff's sale does not clear such servitude. C. Q. B., *Dorion* vs *Seminary of St. Sulpice.* 16 Q. L. R., 246.

3. The half (on a width of sixty feet) of a front road separating the farm of Defendant from the river, had slid into the river and the municipal corporation plaintiff, after having restored the road by means of a stone wall built on the bottom of the river, filled in with wood, stone and earth ballast, sued the Defendant for payment of the cost of the works. No by-law nor *procès-verbal* had been drawn up.

Held: — (Confirming in review the judgment of the Superior Court), that those works were a reconstruction and not repairs and that Defendant was not responsible especially as no by-law nor *procès-verbal* had been drawn up. *Corporation of Belœil* and *Préfontaine.* 11 O. R., S. C. 81 C. R. 2 Rev. Jurisp., 81 S. C. Archibald J. Confirmed in Review. 4 Rev. de Jur: 163.

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825. No one is bound to keep in repair, on one and the same parcel of land, in a depth of thirty arpents, more than one front road governed by the provisions of this chapter.

If there be more than one front road on any piece of land of such depth, to be kept in repair in accordance with the provisions of this chapter, the council must declare which of such roads is to be kept in repair by the proprietor or occupant of the lot ; and the other front roads are treated as by-roads.

In default of such declaration, the proprietor or occupant is only liable for work upon the road in nearest proximity to his residence.

Decisions. — 1. When a proprietor having already a front road upon his farm gives his consent to the opening of a second front road upon the same farm and by agreement with the corporation he binds himself to keep it in repair, the purchaser of his property will also be obliged to keep it in repair even if the deed of agreement with the corporation has not been registered, and the proprietor did not bind himself when purchasing to maintain the second front road. Such front road falls under the provisions of art. 397. *Corporation of Ste. Rose Village* and *Dubois.* C. C., 4 L. N., 334.

The proprietor of real-estate, having already a front road to keep in repair upon a first range, where he resides, is not obliged to give free of charge the necessary land for a front road on the second range ; as to that road the obligations upon him are only those of the neighborhood.

The obstructions upon the land where this road is built do not justify the municipal corporation in taking possession of the land of a neighboring proprietor in order to pass around a rock, without indemnity or any formalities ; much less to neglect the keeping in repair of that road, and to allow accumulation of water, which may afterwards overflow neighboring properties and cause damages. *Mahoney* and *Corporation of West Templeton*, 2. Rév. Jur. 469. S. C. Gill, J.

Section III.—By-Roads.

826. The work of keeping by-roads leading from one range to another in repair is performed by the proprietors or occupants of the taxable property in the range to which such by-roads lead from any older range.

Decisions. — 1. A local corporation is bound to keep in repair a by-road situated in its limits, leading from an older range in the municipality to an other range in a neighboring municipality and if it does not keep such by-road in good order, it is responsible under the provisions of art. 793. C. C. *Dubois* and *Corporation of the parish of Ste. Croix.* 1. Q. L. R., 313. (See art. 793. 30).

2. A road which does not lead from one range to another must be maintained by the corporation within whose limits it is. *Hamel* vs *Corporation of St. Pie.* 6. Rev. de Jur., 250. (See art. 793).

3. That a municipal council commits an abuse of power in putting at the charge of rate-payers who already have a front road to maintain an unenclosed road leading to a *cul-de-sac.* Such road should be maintained at the cost of the corporation who may also compel the projectors of it to enclose it under a penalty of $20 for each day's neglect so to do *Hamel* vs *Corporation of St. Pie.* 6 Rev. de Jur., 250.

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827. Repairs to be done on such by-roads are not performed by the labor of the parties bound to maintain the same, but by contribution in money levied by the road inspector, on the taxable property by reason whereof such parties are liable for such repairs, by means of an act of apportionment made by such officer, according to the rule prescribed by article 821, and approved by resolution of the council.

828. Every year such work is publicly given out to the lowest tenderer, by the inspector of roads, after public notice, during the month of October for the period included between the first day of November and the thirtieth day of April inclusively, and in the month of April for the period included between the first day of May and the thirty-first day of October inclusively, who offers satisfactory security for the execution of such work.

The council may, by resolution, order that such work shall be given out by the road inspector for the period of one year, in the same manner and under the same conditions as in the preceding article.

The public notice required by the foregoing paragraphs may be given either in writing or verbally, and applies to the case of by-roads regulated by *procès-verbal*.—R. S. Q., 6179.

829. All works on by-roads leading exclusively to ferries or toll-bridges are made by the owners or occupants of such ferries or toll-bridges.

830. The work on any other by-road is done at the expense of the corporation of the municipality.

CHAPTER FOURTH

OF WINTER ROADS

SECTION I.—GENERAL PROVISIONS.

831. Winter roads are laid out and kept in repair in accordance with the rules contained in this chapter.

832. Winter roads are laid out before the first day of December in each year, in the places fixed by the road inspector of the division, in accordance always with the orders of the council, if the council see fit to give orders thereon.

The line thereof is marked by means of balizes of spruce, cedar

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or other wood, of at least eight feet in height, fixed on the ground at each side of the road, at a distance of not more than thirty-six feet one from the other on each line ; if the road is laid down with two tracks, a row of balizes must be fixed in a similar manner between the two tracks.

Front roads are laid out by the persons who are liable for work on such roads, and by-roads by the road inspector of the division.

833. The council of every corporation under the control of which any road whatsoever falls may, by resolution, order that such road be, during the Winter, laid out and kept in repair as a double road, one track thereof to be for vehicles going in one direction, and the other track for vehicles going in the opposite direction.

In default of an order of the council under the preceding provision, a double track of twenty-five feet in length, at distances not more than four acres from one another, must be made and maintained on every municipal winter road.

834. Every person placing balizes on a summer road, after the road which must be substituted therefor in winter has been laid out beyond the limits of such road, or displacing balizes already placed, incurs a penalty not exceeding eight dollars.

835. No winter road, if there is a single track, shall be less than seven feet in width, between the two rows of balizes. If it is a double road, each track must be at least five feet in width. It is however lawful for municipal councils to make and enact by-laws providing that winter roads be laid out and maintained at a lesser or greater width than seven feet.—R. S. Q., 6180.

Decision. — A municipality is responsible for damages caused in its limits if the provisions of this article have not be en observed. C. Q. R. *Corporation of St. Christophe of Arthabaska* and *Beaudet.* 5 Q. L. R., 316 10 R. L. 591. A winter road must be seven feet in width. Ibid.

836. Every owner or occupant of land situated upon any front road, and all the persons interested in by-roads must, unless it is otherwise provided for by the local council in virtue of article 541, or unless they have been exempted from doing so by the road inspector or the council, between the first day of December in each year and the first day of April following, keep all the fences erected by the side of such road or by-road and all the fences forming an angle with those along the road or by-road to a distance of twenty-five feet, levelled to within twenty-four inches of the ground.

This provision does not apply to hedges, upright posts, fences more than twenty-five feet distant from the road, nor to those which cannot be taken down or rebuilt without great expense, nor to fences erected in the woods, or within the limits of a village, whether it be or be not constituted into a separate municipality.

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Nevertheless the owners or occupants of lands who maintain the fences along any front road not being that on which they are obliged to work, must pay to the person bound to maintain such road the excess of work occasioned by the fact that, as such fence cannot be taken down, the person liable for the work on such road has additional labor.—R. S. Q. 6081.

837. Every council may, by resolution, give such orders as it deems proper, respecting the maintenance of winter roads which are under its control. These orders are binding upon the officers of the council, and upon all parties interested in the work upon the road to which they relate.

838. Winter roads laid out on the same lines as the summer roads are at the expense of the same persons or corporations as in summer.

839. If any by-road leading solely to any ferry or pay-bridge, the road work of which is at the charge of the owner or occupant of such ferry or pay-bridge, serve in winter as a passage to any other public road, the work of maintaining such by-road or the road which is substituted therefor is not, during the winter, at the costs and charges of such owner or occupant, but is performed in the same manner as that of any other by-road.

SECTION II.—OF WINTER ROADS WHICH REPLACE MUNICIPAL SUMMER ROADS.

840. Winter roads on land may be laid out beyond their lines in Summer, and across any field, enclosure or land in standing timber. If the proprietor of such land suffers damage, he shall be indemnified therefor by the council of the municipality, provided the council and the proprietor come to an understanding thereon; if they do not, the council has the damage assessed by the municipal valuators, the council reserving however its recourse against all parties interested in the road, for the repayment of the moneys so expended.

These roads cannot, however, be laid out through gardens, orchards, yards or other lands enclosed within quickset hedges, or fences which cannot be taken down or replaced without incurring heavy expenses, unless the consent of the proprietor or occupant be obtained.

The municipal council may make by-laws for the purpose of allowing the opening of winter roads across all fields or through all woods, for hauling logs, square timber or cord-wood, provided it be done without causing damage, and by complying with the restrictions contained in this article.

Decision. — A winter road cannot be made across a field which is enclosed by a stone fence. *Lavoie* and *Grayel*. C. C. 10 L. C. J.

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841. Winter roads which are substituted for municipal summer roads are kept in repair, either by those who in Summer are liable for work upon the roads for which the former are substituted, or by the corporation itself, when such roads are maintained at its expense, except in the case of article 839.

SECTION III.—OF WINTER ROADS ON RIVERS.

842. The corporation of every local municipality situated on the banks of a river or of any other piece of water, which separates in front such municipality or a part of such municipality from another, is bound to lay out and maintain during the Winter, over half such river or piece of water, for the purpose of connecting the two municipalities, any road demanded by the council of one of such municipalities.

842*a*. The corporation of every local municipality situated on the river St. Lawrence is bound to lay out and maintain during the Winter, within its limits and over half of the piece of water separating such municipality or a portion thereof from another, or from another local municipality, city or town municipality, for the purpose of connecting such local municipality with another local municipality or with a city or town municipality, or of connecting two city or town municipalities situated on the bank of such river, every road required by the council of one of such local municipalities or by one of such city or town municipalities ; and on the refusal or neglect of the council of such local municipality, the road may be laid out, made and maintained by the corporation of the local, city or town municipality demanding the same, at the expense and on the responsability of the corporation in default.—R. S. Q. 6183.

843. On the refusal or neglect of the council of the neighboring municipality, the road may be laid out, made, and maintained by the corporation demanding the same at the expenses of the corporation in default, which is responsible therefor.

844. Any road laid out and maintained upon the ice, under article 842, may be continued at the expense of the corporation liable for such road work, across any field or land in standing timber, except through orchards, yards and grounds enclosed by wall or hedge, to connect the road or the river or other piece of water with any other public road in the vicinity.

Every person who, for the purpose of obtaining a supply of ice, makes an opening or a hole in the ice of a river upon which a public road is traced, shall surround such opening or hole by means of a fence or barrier sufficient to prevent any accident, under penalty of a fine of not less than five or more than fifty dollars, without pre-

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judice to the recourse in damages of any person injured thereby.—R. S. Q. 6184.

845. Such roads are laid out as soon as the ice is sufficiently strong, under the direction of the inspectors of roads or other special officers of the two councils interested.

846. Expenses incurred in laying out and maintaining any winter road upon the river St. Lawrence, the Ottawa river, the river Mille Isles, the Chambly river, and the river des Prairies, by the corporations of the country or village municipalities situated on the banks of such rivers, are repaid them by the corporation of the county municipality, upon presentation of a statement of such expenses, certified by the mayor or secretary-treasurer of the local council, saving the case when such expenses must be reimbursed by town or city municipalities, in virtue of the following article.

847. The corporation of any town or city municipality situate on the banks of the river St. Lawrence is bound to reimburse the expenditure incurred in laying out and maintaining every winter road upon such river, which terminates within a radius of two miles from the limits of such municipality, to the corporation of the neighboring local municipality on the same bank which has incurred them.

If such road passes through a local municipality and is made for the purpose of connecting two town or city municipalities situated on opposite banks of the river St. Lawrence, the corporations of such town or city municipalities so situated on opposite banks of the river St. Lawrence are bound to reimburse to the corporation of the municipality, through which such road passes, the expenditure incurred in laying out and maintaining the whole of such winter road, each paying a shore in proportion to the respective amount of the valuation of the property as established by the municipal valuation roll.—R. S. Q. 6185.

847*a*. The corporation of the municipality of the county of Maskinongé is solely responsible for damage resulting from the improper maintenance of the winter roads on the river St. Lawrence, by the rural and village municipalities included in such county municipality.—R. S. Q. 6186.

848. The provisions of articles 842, 843, 844, 845, 846 and 847 do not apply to roads on rivers or other pieces of water, which are substituted for summer roads.

849. Corporations are not responsible for accidents or damages occasioned by the breaking of the ice, on roads laid out and maintained by them on rivers or other pieces of water.

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TITLE FOURTH

OF MUNICIPAL BRIDGES

850. All public bridges, of eight feet span or more, save and except those referred to in article 883 and those governed by special acts or possessed by iron or wooden railway companies, or by the imperial, federal, or provincial governments, are under the control of municipal corporations, and are made and maintained in accordance with the provisions of this title.

851. All bridges situated either upon front roads or by-roads, are either local bridges or county bridges.

Local bridges are those which are wholly situate in one and the same local municipality.

County bridges are those which lie between two local municipalities. If any bridge lies between two local municipalities which form part of two county municipalities, it is the bridge of the two county municipalities.

852. Municipal bridges, known at the time of the coming into force of this code as local bridges or county bridges, continue to be so known and to be governed as such, until otherwise provided under the authority of this code.

853. Every municipal bridge must have hand-rails or other sufficient protection; it must be at least fourteen feet in breadth between such hand-rails, and must be constructed of materials fastened or bound together in such a manner as to prevent all accidents.

854. Every municipal bridge must be kept in good order in the manner required by law, and by the by-laws or *procès-verbaux* concerning it.

855. A by-law or a *procès-verbal* to regulate the work of constructing, improving or maintaining any municipal bridge may be drawn up, in the manner prescribed by article 794, either upon the petition of any person interested in such work, or upon the order of the municipal council, after the passing of a by-law or resolution in relation to any bridge, in virtue of articles 526 or 527.

All the provisions of the second chapter of the preceding title respecting the manner of drawing up, amending or repealing a *procès-verbal* of a road, and the act of apportionment relating thereto, apply to *procès-verbaux* to be drawn up, or already drawn up, respecting municipal bridges, in so far as they are consistent with the provi-

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sions of this title and the nature of the work to be performed upon such bridges.

856. In the absence of *procès-verbaux* or of by-laws respecting them, the work of constructing, improving or maintaining bridges situated on a front road, is performed at the cost of all the proprietors or occupants of the taxable property comprised in the range in which is such front road, and the work upon bridges situated upon by-roads is at the costs of persons liable for such work on such by-roads.

The work of constructing or improving such bridges is in such case performed by contract given out in the manner prescribed in the seventh title of this book, and the repairs are performed according to the rules laid down in articles 827 and 828.

Decisions. — 1. The winter road on a public bridge is to be kept in good order as a by-road, by those who are bound to do so. M. C. 801, 838, 856, 773 and 777. *Corporation of Laval* and *Moore*. C. C. 21st May 1894. Quebec, Andrews, J.

2. A municipal bridge being a charge upon all the rate-payers of the range in which it is situated, it is illegal to exempt certain of them for the reason that they have already contributed to the cost of bridges over water-courses which drain their individual lands. *Dupuis* vs. *Corporation of St. Isidore*. 17 Q. O. R. 482 (C. C.)

857. Municipal bridges are made or maintained by the corporation of the local municipality in which they are situated, if any by-law has been passed by the council of such municipality, in virtue of article 535, with reference to bridges.

858. Articles 757, 758, 759, 760, 761, 762, 769, 780, 781, 782, 785, 786, 787, 789, 790, 791 and 793 apply also *mutatis mutandis*, to municipal bridges.

Decisions. — 1. A by-law enacted by a local council ordering that bridges on a road be built by all the proprietors who drain their farms thereunder may be quashed if those farms are situated in different local municipalities, this road being then a county road. *Goulet* and *Corporation of Ste. Marthe*. 29 L. C. J., 107.

2. In the case *Giguère* and *Corporation of the township of Chertsey*. C. C. Joliette, 13th January 1874. Olivier J. 5 R. L., 285. It was held under, the provisions of this article and art. 793, that a municipal corporation is liable to be fined if it neglected to rebuild a bridge carried away by flood and which at first had been built by the order of said municipal corporation : that this obligation of rebuilding bridges holds good when there is no by-law under art. 735, but art. 793 does not apply in the case provided under art. 535 ; that when a bridge built by government on a river, in a municipality, has been carried away by flood, the corporation which had not passed any by-law ordering the building of that bridge is not liable to be fined, for not having rebuilt it. Municipal corporations are not necessarily bound to build bridges to connect the highway existing on each side of rivers. They may consider crossing by ferry-boat or otherwise sufficient and that the rebuilding of such bridges would be too costly.

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But if the bridge had been built under a municipal enactment, and after construction was destroyed the corporation would be guilty of neglect if it did not rebuild it: C. C. *Giguère* vs *Corporation of Chertsey*. 5 R. L. 285.

3. A railway company is responsible towards a municipal corporation for damages caused to a municipal bridge by the works of said company even for the cost of rebuilding such bridge. C. Q. B. *Corporation of Tingwick* and *Grand Trunk Railway Company of Canada*. 3 Q. L. R., 111.

859. Any persons driving any vehicle faster than a walk, over any bridge exceeding twenty feet in length, unless such bridge is wholly constructed of stone, brick or earth, or cutting, defacing or injuring any part of any bridge, or of the posts, or of any other object forming part of a bridge or belonging thereto, incurs a penalty of not less than two nor more than twenty dollars, in addition to the damages caused.

859*a*. When a municipality has decided to construct an iron bridge under the direction of the government, the council of such municipality may insert in a by-law that the abutments and bridge shall be built under the control of the government and of its officers, or homologate a *procès-verbal* containing such provisions.

The foregoing provision applies to every bridge the construction whereof is already ordered, whether the work be commenced or not. —53 Vic., ch. 63, s. 9.

TITLE FIFTH

OF FERRIES

860. All ferries on any river or other piece of water are under the control of the corporation of the local municipality within the limits of which is situated such river or piece of water.

861. If a river, stream or other piece of water separates one local municipality from another, the ferry is under the joint control of the corporations of the two local municipalities adjoining such river, stream or piece of water.

862. No person can carry on the occupation or trade of a ferryman without a license to that effect; and any one so acting without a license, or beyond the limits assigned by his license, incurs a penalty not exceeding four dollars for each person or thing ferried over by him.

863. In the case of article 861, the license is given by the councils

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of the two municipalities interested, in conformity with the by-laws in force for that end, or if such councils do not agree, by the lieutenant-governor, in conformity with the by-laws made under articles 549 and 550, and approved by him.

864. The moneys arising from any license granted by the lieutenant-governor belong in equal shares to the corporations of the two municipalities interested.

865. Neither the local council nor the lieutenant-governor can grant any license to keep a ferry within the limits for which an exclusive privilege has been conferred by any law on the proprietor of a toll bridge.

866. Ferries between the parish of Notre Dame de la Victoire and the city of Quebec, between the parish of Longueuil and the city of Montreal, between Montreal and Laprairie, and between Lachine and Caughnawaga, are not governed according to the provisions of this code.

TITLE SIXTH

OF MUNICIPAL WATER-COURSES

867. All water-course draining several pieces of land, with the exception of boundary ditches, which drain only the two properties between which they are situated, and of road ditches, are regulated according to the provisions of this title.

868. Every river or natural water-course, in the parts thereof which are neither navigable nor floatable, is a municipal water-course within the meaning of the provisions of this title.

A river or natural water-course which is only floatable at certain periods of the year or after rains, does not cease to be a municipal water-course.

869. Municipal water-courses are either local water-courses or county water-courses.

Water-courses situated wholly in one local municipality are local water-courses.

Those which divide two local municipalities, or which pass through more than one local municipality, are county water-courses. If a water-course divides or passes through local municipalities forming part of several county municipalities, it is the water-course of all such county municipalities.

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870. The work of constructing, improving or maintaining any municipal watercourse is performed by the persons interested who are liable therefor under by-law, *procès-verbal* or act of agreement, or under the following article, or by the corporation, if a by-law has been passed in virtue of article 475.

Decisions. — 1. When work on a water-course is to be done in common, and any one of those bound to do his share, refuses to act jointly with the others, an apportionnement will be drawn up stating the share of each one.

2. It is not sufficient merely to reside or to possess lands in the vicinity of a water-course to be bound to work on such water-course No one is liable to do such work unless he drains his land into such water-course, and in proportion of the quantity of water that flows from his lands into said water-course. *Corporation of Berthier* and *Gulvremont*. 29 L. C. J, 223.

3. A water-course which crosses two municipalities is a county water course, under the jurisdiction of the county council.

A county council giving a decision referring to a *procès-verbal* concerning such water-course performs solely an administrative function.

All the interested proprietors, in a *procès-verbal* of a water-course, are liable to perform the works in proportion to the extent of the land they drain therein. *Barbeau* and *Corporation of Laprairie*. 5 M. L. R., 84.

871. In the absence of a by-law, of an act of agreement, or of a *procès-verbal*, the work on a municipal water-course is performed by the owner or occupant of each piece of land through which such water-course passes. If a water-course passes between two pieces of land, it is at the joint cost of the owners or occupants of the same.

Nevertheless, in the case of article 882, and in the absence of a by-law, act of agreement, or *procès-verbal*, the work is at the cost of the owners or occupants of the low and swampy lands drained by the water-course.

872. Work upon municipal water-courses is performed in the manner laid down by the provisions of this code and by the acts of agreement, *procès-verbaux* or by-laws, as the case may be, which regulate such water-courses.

873. All the work ordered to be done on any county or local municipal water-course is performed under the superintendence and control of the rural inspector of the division through which such water-course flows, or of a special officer appointed for that purpose by the council or board of delegates who have the control of such water-course.

Such special officer is invested with the same powers, subject to the same obligations, and liable to the same penalties in relation to the water-course for which he has been appointed, as the rural inspector.

If such special officer is selected from among the persons inter-

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ested in the work to be performed on such water-course, he shall not be entitled to any fee for his services or loss of time from the parties interested ; but he may be paid by the council who appointed him.—R. S. Q. 6187.

874. The work of opening a municipal water-course cannot, however, be superintended by a rural inspector who is personally interested in the work to be performed on such water-course.

875. Municipal water-courses must be kept in good order and free from all obstructions, which prevent or impede the water from flowing, for the whole period between the first day of June and the thirty-first day of October following.

Decisions. — 1. The provisions of art. 875 of the municipal code are applicable to railway companies under the jurisdiction of the Canadian parliament. *Canadian Pacific Railway* vs *Corporation Notre-Dame de Bonsecours.* 7 Q. O. R ; (Q. B.) 121. Confirmed by the Privy Council. L. R., App. Ca. (1899) 367.

2. Private persons may for the protection of their interests cause the removal of illegal constructions without being liable to damages. *Pierce et al.* vs *McConville.* 5 Rev. de Jur., 534.

876. The rural inspector of every rural division must, between the first and fifteenth days of the month of June in each year, and thereafter until the month of November following, whenever required so to do by the council, or by the board of delegates or by any person interested, visit and examine the water-courses under his superintendence, and provide that the necessary work for the maintenance of the same be executed without delay, in conformity with the provisions of the law, and of the *procès-verbaux,* acts of agreement or by-laws which prescribe such work.

877. No person is bound to perform such work upon any municipal water-course between the first day of November in each year and the thirty-first day of the month of May following, both days inclusive, except on the order of the inspector, when such water-course is obstructed by snow or ice or otherwise.—R. S. Q. 6188.

877*a*. The council may, by resolution duly published, alter the dates mentioned in articles 875, 876 and 877.

877*b*. In cases when the work is not done by the labor of the rate-payers, the inspector or special officer shall, at the time when the water courses should be open and clear, whenever he is required so to do, remove or cause to be removed the obstructions caused by snow or ice or otherwise ; and the cost of such work is paid by the interested parties mentioned in the *procès-verbal.*—53 Vic., ch. 63, s. 10.

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878. Articles 757, 758, 759, 760, 761, 762, 780, 781, 782, 786, 787, 789, 790 and 791, respecting municipal roads, apply, *mutatis mutandis*, to municipal water-courses.

Article 793 applies also to municipal water-courses, except, however, those on which the work is regulated by act of agreement.

Works of improvement or maintenance on every municipal water-course of the nature of those above mentioned, can be regulated by *procès-verbal* or by-law, and made by the owners of lands drained either by such river or natural water-course, or its tributaries.—R. S. Q. 6189.

Decisions.—1. Tre special superintendent must mention in his *procès-verbal*, the extent of the land drained by the water-course, in order to establish the proportion of work for the interested parties or the cost of such works. *Laviolette* vs *Corporation of Napierville County*. 3 L. C. J., 216.

2. The municipal authority has no right to open, by a *procès-verbal*, a water-course to let water flow from upper to lower land, in greater quantity than if no works had been ordered by the *procès-verbal*. And the injured owner may before Superior Court, ask that the *procès-verbal* be set aside, even though he may have appealed before county council, from the homologation of the *procès-verbal* by the local council. *Corporation of parish of Ste. Anne de Bout de l'Ile* vs *Reburn*. C. Q. B; Ramsay's Appeal cases, 484; 1 M. L. R; Q. B. 200; 4 Dec. C. A. 192; 8 L. N. 67.

3. By the Civil Code (400, 421, 424, 427, 589, 2213) floatable rivers and their tributaries are part of the public domain.

If municipal corporations possess rights of way and general surveillance over such rivers, these do not include the right to use the beds of rivers for the construction of bridges or other works in such a way as to interfere with the floating of timber. *Laurin* vs *Charlemagne and Lake Ouareau Lumber Co.* 6 Rev. de Jur. 49.

879. Whoever obstructs any municipal water-course, or allows it to be obstructed in any manner incurs, over and above the damage occasioned, a penalty not exceeding one dollar for every day such obstruction remains, at the expiration of two days from verbal or written notice given by or on behalf of any person interested, having for object the removal of such obstruction.

880. No municipal council or board of delegates can, by itself or by its officers, direct the demolition of any dam, dyke, or flood-gate of any mill or factory whatsoever, on the ground that such dam, dyke or flood-gate is an obstruction to a water-course.

881. No person is in any manner bound to make or to assist in making, through his own land, a water-course of any depth greater than that which is necessary for draining such land.

882. The owner or occupant of any low and swampy land may make a water-course through any neighboring land, or avail himself of those which are already made, deepen the same if they are not

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deep enough, and repair and keep them in order, in so far as necessary for the drainage of such low and swampy land.

The work to be done on such water-course may be regulated by by-laws, *procès-verbaux* or by act of agreement.

Decisions.—1. Municipal councils have jurisdiction only on water-courses necessary for draining lands in general, that is to say on those which are for general use, and which are not for a particular interest. They have no jurisdiction on boundary ditches which are only for the draining of two adjoining lands; they, being for private use only, and under the exclusive jurisdiction of the rural inspectors.

2. The servitude existing under art. 882 M. C. cannot be invoked for private purposes.

3. The owner of the lower land cannot be compelled to receive the waters from the upper land when they do not flow through their natural courses, but collect and are sent upon the lower land by means which have changed the natural courses. *Lapointe* and *Corporation of County of Berthier*. 10 O. R; S. C. 24.

883. The rural inspector of the division may authorize the opening of any trench or excavation in any public road, to enable a water-course to pass through the same.

Such trench or excavation must be indicated, both by day and night, in such a manner as to prevent all accident, under a penalty of the damages occasioned.

Within the forty-eight hours next after the commencement of the work upon the road, a suitable and solid bridge of the width of the road must be built over such water-course. This bridge continues to form part of the work of the water-course.

884. Any municipal council, by resolution to that effect or on the petition of one or more persons interested in the opening, closing, division, construction, or maintainance of any water-course which is or ought to be under its control, requiring that the work to be done on such water-course be regulated or determined, or that the same be closed, must without delay: 1. Call together at one of its sittings, by public notice, the rate-payers interested in the projected work, and if, after hearing them, the council is of opinion that such work should be performed, make a by-law to settle, determine, and apportion the work on such water-course, or 2. Appoint a special superintendent, with instructions to visit the places mentioned in the resolution or petition, to report to the council and to draw up a *procès-verbal*, if there is occasion to do so, within the thirty days next after his appointment, or within the delay fixed by the council.—R. S. Q. 6190.

885. All the provisions of the second chapter of the third title of this book, respecting the manner of making, amending or repealing any *procès-verbal* of a road and the act of apportionment connected

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therewith, apply to *procès-verbaux* to be made or already made respecting municipal water-courses, in so far as such provisions are consistent with those of this title and with the nature of the work to be performed upon the water-course.

Decisions. — 1. A *procès-verbal* which binds a proprietor to work on a water-course which is the continuation of a natural water-course will not be set aside as to his property, though it should be proven that the latter's farm could be drained by the natural water-course; it also being established that by the works done, waters of his have flowed therein, which were not their natural course. C. Q. B: *Bérard dit Lépine* and *Corporation of County of Berthier*. 29 L. C. J., 222.

2. A proprietor or an occupant cannot be compelled to work on a water-course, under a *procès-verbal* except according to the extent of his land. C. Q. B. *Corporation of County of Berthier* and *Guevremont*. 29 L. C. J., 223.

3. The absence of the proper designation and description of property affected by servitude created by *procès-verbal* regulating the construction and maintenance of artificial water-courses is a radical nullity, and not an informality.

Such nullity may be pleaded in a suit for payment the under such *procès-verbal* without directly attacking the *procès-verbal*.

A promise to pay made by defendant is null for want of legal consideration. *Corporation of township of St. Edwidge de Clifton* vs *James Fcy*. 5 Rev. de Jur., 569.

886. The waters of any municipal water-course may be turned into any other municipal course, if it is so ordered by a *procès-verbal* of by-law, as the case may be, without such two water-courses being deemed to be a single water-course from the fact of their junction.

887. Any proprietor or occupant whose land is drained by any water-course, may be made liable for the work on such water-course, in virtue of a *procès-verbal*, or of a by-law made under article 884, for and by reason of the extent of his land so drained, in the proportion established by the special superintendent, the council or the board of delegates, as the case may be; but should an error of not more than ten per cent of the whole of the land so drained be made, such error is not to be taken into account. The portion of land so drained need not be designated otherwise than by indicating its area and by the official number of the lot.

The description so made of any lots or parts of lots in *procès-verbaux* or by-laws now in existence, is declared sufficient, without prejudice, however, to pending cases.—60 Vic., ch. 57, ss. 8 and 9.

Decisions. — 1. A *procès-verbal* declaring the proprietor of lands liable for work on a water-course for part of his lands, must describe what part will be drained by the water-course, for which the proprietor is liable by stating the official number of the lot and all boundaries of the part to be drained. Thus when it was ordered that the owner of a farm must keep a water-course in proper order for so many acres forming a part of a certain lot, without any further description of the part to be drained, such *procès-verbal* was set aside.

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The description of lands liable for the work upon water-courses is not a simple formality, but is an essential part of the municipal ordinance contained in the *procès-verbal*. *Barrette* and *Corporation of St. Barthelomy*. 4 O. R ; C. A. 92.

2. In order that property should be regularly bound under a *procès-verbal* or a by-law for the execution of work upon a water-course, three conditions are required : 1o the land liable thereto must be drained by the water-course. 2o The contribution to the work must be in proportion to the extent of the land to be drained. 3o The extent of the land to be drained must be mentioned in the *procès-verbal*.

The drainage that is made by a proprietor from his upper land does not render him responsible for damage, if he does not let more water flow than what is caused by its natural declivity. *Majeau* vs *Corporation of Joliette*. 3 Rev. Jur. 116. C. S. De Lorimier.

888. The persons interested in any municipal water-course, whether the same is governed by a by-law, by a *procès-verbal*, or in virtue of article 871 may, by an act of agreement approved by the council or the board of delegates who have the control of such water-course, determine the work to be done thereon, the manner in which it shall be done, and what persons among themselves shall do the same.

889. The act of agreement takes *de jure* the place of the *procès-verbal* or of the by-law which regulates such water-course, if there is one, and is obligatory upon all who became parties to the same, and upon their representatives, until it is repealed by the council or the board of delegates, or by consent of all the parties thereto, or their representatives, or until it is replaced by a subsequent *procès-verbal* or by-law, under the same penalties as if the water-course was regulated by a *procès-verbal*.

890. A copy of every act of agreement must be deposited in the office of the council of every local municipality in which is situated, either in whole or in part, the water-course regulated by such act.

891. Any person may use any municipal water-course as well as the banks thereof, for the conveyance of all kinds of timber or wood, and for the passage of all boats, ferry-boats and canoes, subject always to the charge of repairing without delay all fences, drains or ditches damaged thereby, and to the payment of all damages resulting from the exercise of such right.

Decision. — The right to float lost logs on certain streams in recognized by the law and he who erects a dyke or obstruction without shute or slide is responsible in damages. *Atkinson* vs *Couture*. 2 O. R. 46 S. C.

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TITLE SEVENTH

OF OTHER PUBLIC WORKS OF MUNICIPAL CORPORATIONS

892. All public works of county or local municipal corporations, the execution of which is not specially regulated by the provisions of this code, are made at the expense of the corporation which orders them, by contract awarded and passed according to the rules laid down in this title.

Decisions. — 1. When under a by-law of a municipal county council, a committee has been appointed to acquire a lot of land upon which to erect a building for the registry office and a court house, such committee will exceed its authority if it should award a contract for the construction of a building to contain a registry office, a court of justice, and also a public hall for the use of the parish even although the cost of the building should not exceed the amount mentioned by the by-law, and no action will lie in favor of the contractor against the corporation under such a contract, the corporation having given notice that it would not be responsible for those works under such contract. C. S. *Fournier dit Préfontaine* and *Corporation of Chambly County.* 14 L. C. J. 295.

2. A municipal corporation which under the authority of its council, has bound itself to give a contract to a company, is not obliged to give the contract to a third party which the company has substituted for itself without the consent of the corporation. C. S. *St. James* vs *Corporation of St. Gabriel.* 12 R. L. 15.

893. On resolution of the council to that effect, public notice is given, specifying summarily the works to be made, the details prescribed by the council, and the time during which tenders therefor may be sent in.

894. The contract for such works must be awarded by resolution of the council.

895. The contract is made in the name of the corporation, and accepted by the head of the council, or by a person specially authorized for that purpose by the council.

Decision. — If the council of the municipality of the county neglects to give notice, or to award a contract for work ordered under a *procès-verbal* according to the instructions of the board of delegates, a *mandamus* will lie to compel them, and the other interested municipal corporations should be *mis-en-cause.* And upon such proceedings the interested corporations are debarred from discussing the regularity of the proceedings concerning the *procès-verbal,* and those preceding its homologation. These can be contested in the manner mentioned by law and specially under the Municipal Code. *Girard* vs *Corporation of Arthabaska County.* S. C. 32 L. C. J. 32.

896. The person to whom such work is adjudged mush give secur-

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ity to the satisfaction of the council for the due performance of such work, and for the payment of all damages, costs and interest, in the event of his not fulfilling the contract.

897. Whenever work is under the direction of the county delegates, the notice is published, and the contract awarded and entered into according to instructions from the board of delegates, by the council of the county municipality which originally proposed the work in question.

898. The contract is binding on every municipal corporation interested in the work to which it relates.

899. The council with whom the contract has been made may, in the name of the corporation which it represents, sue to enforce performance thereof before any competent court.

900. The other municipal corporations interested in the work to which such contract relates may bring a similar action, but only after having given the council which entered into the contract a special notice of fifteen days, requiring such council to institute such action.

901. The council or the board of delegates, under whose direction such contract is performed, may order any road inspector of the division in which such work is being done, to superintend its execution.

TITLE EIGHTH

EXPROPRIATION FOR MUNICIPAL PURPOSES

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902. Every municipal council may, in complying with the provisions of this title, appropriate any land required for the execution of works ordered by any by-law, *procès verbal* or other resolution within the scope of its jurisdiction.

Decisions. — 1. Corporations, in making use of the right granted for expropriation, are obliged to act with proper deligence, and are therefore responsible for damages caused to the expropriated party by unnecessary delays. C. Q. B. Montréal, 21 June 1872. *Judah* vs *Corporation of Montreal.* 2 C. R. 470.

2. The formalities prescribed for the opening of a road and for expropriating the land required for such road must be observed strictly under penalty of invalidity, and a corporation which takes possession of land without having fulfilled all formalities will be obliged to restore it

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with damages, even although the formalities had been fulfilled after the institution of the action. A corporation cannot take possession of land without having first ordered its valuation. C. Q. B. *Corporation of township of Nelson* vs *Lemieux*. 2. Q. L. R., 225; *Doyon* vs *Corporation of parish of St. Joseph*. C. Q. B. L. C. J., 193.

3. A municipal corporation has not the right to expropriate part of a tenant's farm, to open a road under the general reserve enacted by the crown giving the right to take the land, without having previously appointed assessors for the land required for such road; notwithstanding such reserve and article 906 M. C. the tenant has a right to indemnification for the expropriated land. C. Q. B. *Corporation of Dorchester* vs *Collet*. 10 Q. L. R., 63.

4. A municipal corporation cannot in virtue of its by-laws and *procès-verbaux*, take possession of the land required for the opening of a road, although it should be the first front road on a lot where the concession holds a reserve of land for such road, without having previously fulfilled the formalities required for expropriation under M. C. *King* vs *Corporation of la partie nord d'Irlande*. 2 O. R; C. A. 266.

5. A municipal council cannot take possession of land for the opening of a road without having proceeded to the valuation prescribed under this article and following of the municipal code. C. Q. B. *Holton* vs *Callaghan*. 9 R. L., 665.

6. The law of the land, specially article 407 of the civil code, does not grant to a municipal corporation the right to order a proprietor to yield his property for cause of public utility without a fair and previous indemnification. S. C., Montreal, Papineau J., *Dupras* vs *Corporation of village of Hochelaga*. 12 R. L., 35.

7. If the officers of a municipality go upon land to execute a *procès-verbal* ordering the re-opening of a road upon that land, the court without taking unto consideration the fact of the existence of the road or even if the *procès-verbal* which orders its re-opening is regular or not, but upon the simple fact that the plaintiff has been in possession for a year and a day, will maintain the possessory action issued against the municipality. A land owner whose land encloses an old public road, and who has possessed if for a year and a day, has sufficient possession to take the action *en complainte* against the municipality, and the change of destination of the road will not be considered. If Plaintiff by such action concludes simply for the payment of damages without any other conclusions, such action is nevertheless deemed a possessory action. C. Q. B. *Hall* vs *Corporation of City of Levis*. 3 R. L., 389.

8. In an action *en réintégrande* against a corporation with conclusions claiming damages, the month's notice under article 22 C. C. P., is not necessary. A local municipal corporation is responsible for the acts of its officers, and specially of its inspector, who in accordance with the instructions of the council takes possession of land for the opening of a road upon it, under a *procès-verbal* homologated by the county council, which is null, because the corporation by a simple resolution, has ordered the works to be done. In such case an action *en réintégrande* will lie for the owner of the land to take possession of his land. C. Q. B. *Dorion* vs *Corporation of the parish of St. Joseph*. 17 L. C. J., 193.

9. A verbal proposition, made by a land owner, at a meeting of the council, to give gratuitously to the corporation the land sufficient for a road, and the passing by the council of a resolution accepting that offer and the appointment of delegates to visit the place and make report, do

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not justify the corporation taking possession of the land without previously fulfilling the essential formalities required to give a title by expropriation.

Such offer may be withdrawn at any time, before it has been formally accepted by a by-law. S. C. *Côté* vs *Corporation of N. D. de la Victoire.* 5 O. R ; S. C., 480.

(In this case, the offer seems to have been withdrawn before it was accepted, and the donation being of land not described, it should have been made by an authentic deed. C. C., 776.)

10. In expropriation matters, the provisions under art. 2168 of C. C. as to the description of the land to beexpropriated must be strictly observed. *O'Neil* vs *City of St. Henry.* 4 Rev. Jur., 139 S. C. Curran J.

903. The corporation becomes the proprietor of such land, and may take possession thereof, without any other formality, from the moment that the decision of the valuators, who fixed or refused an indemnity, has become final and without appeal.

904. No council of a county or rural municipality can, without the consent in writing of the proprietor :

1. Demolish or injure any house, barn, mill, or other building ;

2. Cause a public road to be made through any farm-yard or any garden enclosed by a wall, hedge, board or standing picketfence, nor through any orchard or maple grove situated within a radius of four hundred feet of the house inhabited by the occupant of such orchard or grove, nor through any wood-yard, pleasure ground or other improved and enclosed land, being contiguous to and forming the dependence of a country-house or residence.—R. S. Q. 6191.

Decisions. — 1. A municipal council cannot, without the written consent of the proprietor, cause a public road to be made through a maple grove within a radius of four hundred feet from the house inhabited by the proprietor of such grove, though the projected road should run beyond the radius of four hundred feet. *Massue* vs *Corporation of parish of St. Aimé.* C. Q. B ; 3 M. L. R ; Q. B. 263 ; 31 L. C. J., 246.

2. It seems that the repeal of a by-law for the reasons mentioned under article 904 cannot be asked for : and the proprietor from whom the written consent is required, can object only when the council wishes to proceed to the execution of the by-law, or *procès-verbal. Thibaudeau* vs *Corporation of St. Thècle.* C. C. 1. Rap. de Jur. 65.

3. A municipal corporation has not the right by expropriation to open a street, land which has already been expropriated under a special statute for the construction of a bridge for public use. *Town of Iberville* vs *Jones.* C. Q. B. 3 L. N., 277.

4. A *procès-verbal* or by-law ordering the opening of a road through a farm-yard, can be executed without the consent of the proprietor, if the farm-yard is not enclosed by a wall, hedge, or standing wood or picket fence, these terms applying to a farm-yard as well as to the garden. *Lemay* vs *Corporation of Becancour.* 1 Rev. de Jur. 78 ; S. C. Bourgeois J.

905. No municipal council can, without the consent in writing of the owner, in any manner injure any canal, or the dam of any mill

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or manufactory, nor divert the course of the water which feeds such canal, mill or manufactory, nor cause a public road to pass through property mentioned in any of the first four paragraphs of article 712.

906. No indemnity must be allowed for the land required for the first front road upon a lot, nor for the land reserved for a public road in the grant or concession of a lot.

Nor is any indemnity to be allowed by way of *prix d'affection*.

907. In the valuation of any land taken for a public road, the value of the road which has been done away with, which falls to the expropriated proprietor under article 753, and the special advantages which such proprietor derives from the new road as laid out, must be estimated and go in deduction of the value of such land.

If the land is taken for any other public work, the advantages which the proprietor derives from such work are also estimated, and go in deduction of the value of such land.

Decisions. — 1. A municipal corporation authorized to close streets without a special obligation to indemnify the proprietors along those streets, will nevertheless be condemned to pay the damages caused in exersing that right. The *City of Montréal* vs *Drummond*. 18 L. C. J., 225. C. Q. R. The Privy council has set aside this decision helding: That if the law does not state that in such case the proprietors shall be indemnified they have no right to be indemnified.

That the right of the proprietors is not by direct action but by procedure in expropriation.

If an expropriation or the construction of certain work is authorized by a statute, without mentioning indemnity, there is none due. It is a case of *damnum sine injuria*. *Beauchamp*. Jurisp. of P. C. 263, 765.

2. In the charter of the city of Montreal (52 Vic., ch. 79) the words "actual value" mean the value that a proprietor could obtain for his property from a purchaser who really desired it. *Cassils* vs *City of Montreal*. 14 Q. O. R. 269. (S. C.)

3. In expropriation proceedings municipal corporations must conform to the requirements of the municipal code and the *procès-verbal* for the expropriation ought to describe the land affected.

The municipal corporation ought either to come to an agreement with the party interested or have his land valued by valuators who will hear the parties and their witnesses and pronounce a written decision.

Proof that a road is a front road must be made by writing. — by resolution or *procès-verbal*. *Godbout* vs *Corporation of St. Damien de Buckland*. 14 Q. O. R., 67. S. C.

4. The proprietor of an immoveable dispossessed without the observance of the formalities required by the law in cases of expropriation may even without asking for the annulment of the *procès-verbal* within the 30 days mentioned in the code, institute a possessory action and obtain damages. (Reversing the judgment of Billy, J., and confirming that of the Court of Review. Casault. Routhier and Andrews J. J.) *Walsh* vs *Corporation of Cascapaediac*. 7 Q. O. R; Q. B. 290.

908. The indemnity to be paid for any land liable to expropriation may be fixed and established by agreement between the proprietor

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thereof, if he is of age and in possession of civil rights, and the council under the control of which such expropriation takes place; and it may also be agreed that no indemnity need be accorded to the expropriated proprietor.

In the absence of an understanding between such parties, the value of the land in question, together with whatever goes in compensation with the value of such land, is estimated by the valuators of the local municipality in which such land is situated, and the indemnity is fixed or refused by them.

Decision. — When land is expropriated by a municipal corporation a tenant who alleges that he has suffered damages by such expropriation, must fyle his claim with the municipal council when the expropriation takes place, in order that the amount which will be proven may be included in the taxes which must be levied to pay the cost of expropriation. *Hughes* vs *Corporation of village of Verdun.* 12 O. R.; S. C. 95. **Pagnuelo J.**

909. No one can act as valuator under the provisions of this title:

1. Whenever he himself, or his relations either by blood or marriage, to the degree of cousin-german exclusively, are interested as expropriated persons;

2. Whenever he himself will be called upon to pay the indemnity the case where such indemnity may be granted.

Nevertheless, no valuator can be objected to on the ground or relationship to any one of the parties who must pay the indemnity, in which may be granted.

910. No objection to the competence of any valuator can be made, after the award fixing or refusing such indemnity has been rendered.

911. If, by reason of incompetence, absence, refusal or other causes, some of the valuators in office or of those appointed to replace them, do not act under the provisions of this title, the local council must replace them by other persons capables of discharging such office.

These substitutes are invested with the same powers, subject to the same obligations, and liable to the same penalties as the valuators in office, but they only discharge their duties with regard to the special case of expropriation for which they were appointed.

912. The valuators required to proceed in virtue of the provisions of this title commence their proceedings at the time and place fixed by the council asking the expropriation, and of which they have given public notice, and also a special notice of at least five days to the parties to be expropriated.

They may adjourn their investigations and the examination of the

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parties interested and their witnesses, from day to day, until the award is rendered.

913. Such valuators, after having examined and valued the land and heard the parties interested and their witnesses, render their awards by means of one or more certificates, which are lodged by them in the office of the council demanding the expropriation.

Public notice of such lodging must be given without delay by the secretary-treasurer of the council.

914. Every award rendered by the valuators is final and cannot be appealed from, after the expiration of the thirty days from the notice of the lodging of the certificates, unless objection be made thereto in virtue of the following article.

Decisions. — 1. The expropriated owner who has received the established indemnity for the expropriation of a part of his land, for the widening of a street, has no claim in damages against the corporation, if it has not with deligence paved and repaired the street, in such way as to give an easy access to his property. S. C., *Judah* vs *The Mayor, the Aldermen, etc., of Montreal.* 14 L. C. J., 269.

2. The probable increase in value *in futur* (prospective value) of the expropriated land may be considered as an important element in fixing the indemnity ; and the commissioners charged to fix the same ought to take the probable increase in value into consideration. *The Mayor, etc., of Montreal* and *Brown et al.* Privy Council, 2 L. R ; H. of L. and P. C. 168 ; 16 L. C. J. 1 ; *Morrison* vs *The Mayor et al. of Montreal.* 3 L. R : H. of L. and P. C. 148.

3. The expropriated owner has the right to recover as making part of the indeminty due him, the costs incurred by him in proving his claim before the valuators and the latter must verify those costs and fix the amount by their award. If they should omit to fine them, the proprietor may nevertheless claim those costs by direct action before the competent tribunal. *Carrier* vs *Corporation of N. D. de la Victoire.* S. C. 8 O. R ; S. C. 418. Routhier J.

In the same sense, *Sentenne* and *The City of Montreal.* 2 O. R ; C. A. 297. *Gauthier* vs *The City of Montreal.* Q. B ; 1 O. R ; S. C. 311.

4. In making valuation of expropriated lands, the actual value of those lands at the time of the expropriation must be considered, but the value that may be given by future public works which have been decided upon will not be taken into consideration. Nor will any consideration be given to the greater value that may result to those lands from speculative works of difficult execution or uncertain succes.

The tribunals ought not reverse the decision of the commissioners in expropriation matters unless it is clearly shown that an error has been committed. *The Mayor, etc., of Montreal* and *Lemoine et al.,* 3 O. R : Q. B. 181.

915. Any one aggrieved by any award so rendered may make objection thereto by producing a petition in writing to such effect, at the office of the council, within the thirty days which follow the public notice given under article 913.

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916. After the production of such petition at the office of the council, on demand of one of the parties interested, three new valuators are appointed as follows: one by the council which demands the expropriation, one by the party who objects to the award or by the party who maintains the award, if it be the council that objects to it, and one by a judge of the superior court, the district magistrate, the prothonotary, or by the clerk of the circuit court for the county or district.

If one of the parties refuse to appoint and to make known his valuator within the two days which follow the demand therefor which is served upon such party, the valuator is appointed by such judge, district magistrate, prothonotary or clerk.

Decision. — 1. A person appointed by a judge of the Superior Court as a third arbitrator in a municipal expropriation, cannot be divested of office by a writ of *quo warranto*, but he who pretends that this party has not the conditions of eligibility required by law should recuse him, and after having fyle a petition before a judge of the Superior Court to have his recusation maintained. The valuators appointed under article 916 of municipal code, must have the conditions of eligibility required under article 374 of this code, that is to say, each valuation must be in possession, in his name or in the name of his wife, of a real estate of the value of $400, according to the valuation roll in force. *Préfontaine* vs *Ducharme*, 10 O. R; S. C. 478. In Rev.

917. The three new valuators, after having made oath well and faithfully to discharge their duties, proceed with the valuation of the land and of whatever enters into compensation therewith, to the hearing of the parties interested and their witnesses, and to the rendering of their award, in the same manner as the previous valuators, save and except the time and place of their deliberations, which they fix themselves.

The award rendered by such valuators is final and without appeal.

918. In every award rendered by them, the valuators must mention the lot of which the land taken forms part, indicate the proprietor of such land, as well as the by-law, *procès-verbal*, or order of the council in virtue of which such land is taken, and fix the amount of indemnity, if they grant any, and if not, state their refusal.

919. The indemnity granted by the valuators bears interest at four per cent from the day of the entry into possession of such land, and is payable by the corporation at the expiration of the four months which follow such entry into possession.

920. Any person in possession of such land at the time of the valuation thereof, and who is *bona fide* deemed to be the proprietor thereof, may receive the indemnity granted for such land, saving the recourse of the real proprietor against the person who has received the indemnity.

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921. If, before the expiration of the four months, creditors come forward who claim payment of the indemnity, either in whole or in part, the secretary-treasurer must retain in his hands the moneys intended to pay such indemnity, or the portion thereof claimed, until, on petition to that effect, a judgment is rendered by the magistrate's court for the county or district.

922. If the public work which required the expropriation is at the cost and charge of the rate-payers, in accordance with the provisions of a by-law, of a *procès-verbal*, or of the law, the amount of all the indemnities, with interest and costs, must be apportioned like any other municipal tax, by the secretary-treasurer, upon all the rate-payers, according to the value of the taxable property on account of which they are liable for such works.

The collection of the money is made with as little delay as possible by the secretary-treasurer, in the same manner as local taxes.

923. If the council so order, the amount of such indemnities is apportioned by the municipal officer who conducts the work to which the indemnity relates, and collected by him in the same manner as any other tax for roads or other public works.

924. If the works which require the expropriation are under the direction of the county delegates, the expropriation of all lands takes place under the control of the municipal council of the county in which such lands are situate, according to the instructions of the board of delegates.

TITLE NINTH

APPEALS TO THE COUNTY COUNCIL.

925. An appeal lies to the county council, from the passing of any by-law made by the council of any rural municipality, except those which merely repeal other by-laws, those which relate to the sale of intoxicating liquors, and those which, before coming into force, must be approved by the municipal electors.

The right of appeal can only be exercised within the thirty days which follow the promulgation of the by-law, and no appeal shall lie from a resolution, even when it is passed in the exercise of the powers conferred by article 460.—R. S. Q. 6192.

Decisions. — 1. A writ of prohibition to prevent a municipal county council from taking into consideration an appeal from the homologation

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of an electoral list should be issued against the corporation under its corporate name, and must not be issued against the warden and the councillors who form part of it. *Landry* vs *Migneault*. 15 L. C. J., 65. C. A.

2. The objection of final judgment (*res judicata*) cannot be raised in matters of *procès-verbal*, except where two appeals are taken respecting the homologation of the same *procès-verbal*, to have it homologated, or to have it rejected, when it has been already rejected or homologated. *The Corporation of Ste. Philomène* vs *The Corporation of St. Isidore*. 29 L. C. J., 240.

3. No appeal lies to the county council from a decision of a local council dismissing a petition asking the amendment of a *procès-verbal*, in force, and a writ of prohibition will be issued when the county council has assumed a jurisdiction, that it does not possess by law. *Coutlée* vs *Corporation of Joliette County*. S. C. 9 L. N., 154.

4. The decision of the county council in appeal is binding upon the local council. The proceedings of the local council refusing to obey the orders of the county council are null and void.

Two appeals do not lie before a county council upon the same *procès-verbal*.

A writ of prohibition is the remedy to be adopted against a corporation which has exceeded its jurisdiction. *Côté* vs *Corporation of St. Augustin*. 13 Q. L. R., 348. Rev.

5. An affidavit in general terms attesting the truth of the facts contained in the petition for an injunction is sufficient. *Côté* vs *The Corporation of St. Augustin*. 13 Q. L. R., 348.

6. 1o. According to terms of arts. 935 and following of the M. C., no appeal lies to the county council from decisions of the local council except in cases therein mentioned.

2o. The dismissal by a local council of a petition claiming that a local road should be closed is not one of the cases mentioned under said arts. 925 and following. *Ducharme* vs *The Corporation of the County of Joliette*. 2 Rev. Jur : 268. S. C. De Lorimier J.

7. A county council sitting in appeal cannot condemn a party interested to pay to its members their board and travelling expenses.

Such expenses ought to be borne proportionally by the local corporations of the county and paid by means of the taxes imposed for general purposes by them.

When an appeal is dismissed with costs without saying in favour of whom such costs are granted, they must be borne by the losing party. *Corporation County of Drummond* vs *Laferté*. 14 Q. O. R., 79. S. C.

926. An appeal lies to the same council from the homologation of any *procès-verbal* made by any local council, within thirty days following the notice of homologation given in virtue of article 808, as also from any decision of a local council rendered under article 819, respecting an act of apportionment, within the thirty days which follow such decision.

An appeal also lies to the county council upon any refusal to homologate a *procès-verbal* by the council of a local municipality and the dismissing by the local council, or by its superintendent, of any petition praying for the opening and maintenance of a municipal

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road, bridge, or water-course, or for new provisions respecting their maintenance within the thirty days following the refusal of such homologation or the dismissal of such petition.

926*a*. The right of appeal in all cases mentioned in article 926 equally exists when a water-course is in question.—R. S. Q. 6194.

927. Repealed by R. S. Q. 6195.

928. The appeal may be brought before the county council by any person having an interest therein.

929. The appeal is brought by means of a summary petition, which must be filed in the office of the county council within the prescribed delays, in default whereof the right of appeal determines.

A copy of such petition must, within the same delay, be served at the office of the local council.

930. Every petition in appeal must be taken into consideration by the county council, within the thirty days next after it has been filed in the office of the council, in default of which the appeal determines, save in the case of the following article.

Whenever no ordinary session is to be held within the thirty days, it is the duty of the secretary-treasurer or of the warden, if they are notified thereof, to summon a special meeting of the council to be held within such delay, to take into consideration such petition in appeal.

931. If the special session convened under the preceding article is not held, through the absence of a quorum, the petition in appeal may be taken into consideration at the next general session.

931*a*. The county council cannot, however, take the petition in appeal into consideration until after public notice of the day and hour of the session at which it will proceed to the examination of such petition, has been given by the secretary-treasurer, or by the warden, in the local municipality from which the appeal comes.

932. The council, after having heard the petitioners and the members of the local council or the secretary-treasurer thereof, and after having heard the witnesses and examined the documents produced by the parties, confirms, amends or disallows the by-law, *procès-verbal*, or decisions appealed from.

By its decision, the county council may award and tax the costs in appeal against any party, and in favor either of the county corporation or of any other party ; and such costs may be recovered in the same manner as penalties imposed under the provisions of this code.

Decisions. — 1. A *procès-verbal* concerning a local road was homolog-

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ted by a local council with amendments. An appeal to county council was taken which disallowed the amendments. The local council made a by-law modifying the *procès-verbal* in sach way as to admit the amendments dismisstd by the county council, virtually reversing the decision of the county council. Upon another appeal the county council declared the by-law null and void, holding that the question had already been settled and that the local county ought to conform to the decision of county council instead of trying to avoid it. The circuit court dismissed the decision of the county council on the ground that it was illegal to dismiss the appeal without hearing the case under article 932 M. C. The Court of Queen's Bench reversed that judgment, and maintained the decision of the county council. *The Corporation of County of Yamaska* vs *Durocher*. 30 L. C. J., 216.

2. Upon an appeal to the county council from the decision of a local council rejecting a petition asking for the opening of a road, the county council has authority to render the decision that should have been given by the local council, by appointing a special superintendent to visit the places and to make report. *Bossé* vs *Corporation of County No. 1 of Chicoutimi*. 18 R. L., 531.

3. A county council sitting in appeal from a decision of a local council which though admitting the report of the superintendent, had refused to open a road running entirely in the local municipality, has not the right to order the route and opening of such road nor to regulate its keeping in repair, it being a local road. C. C. *Rioux* vs *Corporation of Rimouski*. 33 L. C. J., 250.

4. It is not necessary to tax costs during the sitting if it has been decided against what party they go; they can be taxed at the following sitting.

The decision of the council ordering those costs to be paid to the secretary-treasurer is legal, the payment to the secretary-treasury being a payment to the corporation.

There is no need to give notice of taxation to the party condemned to pay the costs.

When several appellants have been condemned to pay costs, the county council may determine by an apportionment fixed upon the valuation roll the share of each appellant. *Corporation of County of Portneuf* vs *Larue*. C. C. 9 L. N., 412.

933. If the county council neglects or refuses to take into consideration the petition in appeal within the prescribed delay, or if after having taken the same into consideration within such delay it closes the session or adjourns the same *sine die* or for any period beyond ten days, without having decided upon the merits of the petition, the appeal is quashed, and the by-law, *procès-verbal*, or decision appealed from is held to be confirmed by the county council.

934. A copy of the decision of the county council, if a decision was arrived at, or otherwise, a certificate from the secretary-treasurer of such council, establishing that no decision was given by the council within the required time, must be transmitted without delay to the office of the council of the local municipality from which the appeal arose.

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935. Every decision of the county council which amends any *procès-verbal* must be published by the secretary-treasurer of the local council, by a public notice containing the substance of such decision.

936. Whenever a petition in appeal is served at the office of the local council, the secretary-treasurer of such council must forthwith transmit all the documents relating to the matter which forms the subject of the appeal, to the office of the county council.

These documents must be returned to the office of the local council immediately upon the decision of the county council, or if there has been no decision, immediately upon the expiration of the time during which such decision might have been rendered.

TITLE TENTH

MUNICIPAL TAXES AND DEBTS

CHAPTER FIRST

MUNICIPAL TAXES

SECTION I.—GENERAL PROVISIONS.

937. Municipal taxes imposed on the taxable property of a municipality must be apportioned, as well on the taxable real estate as on the moveable property declared to be taxable by article 710. unless it be specially declared that such taxes must be imposed solely on the taxable real estate.

938. The amount of every tax imposed by a county council, for general or special purposes, is levied, except in the cases mentioned in articles 490 and 491, on all the local corporations of such county, in proportion to the total value of their taxable property liable for the payment of such tax.

Decisions. — 1. A resolution imposing upon several local municipalities of a county the obligation of maintaining in repair certain works is null. C. C. *Corporation of township of Granby* and *Corporation of Shefford County.* 1 O. R.; S. C. 113. (This decision does not seem to be in accord with the arts : 490 and 491).

2. In the case, *The Corporation of Hochelaga County* and *The Corporation of Côte St. Antoine Village,* C. C. Montreal, Loranger J., 8 L. N., 119, it was held that a tax cannot be imposed by a county council otherwise than by a by-law. The imposition of taxes by resolution is illegal.

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939. The portion imposed on each local corporation constitutes a debt payable by such corporation to the county council, according to the conditions and on the terms fixed by such council.

The amount of such portion or debt is levied in the local municipality in the same manner as local taxes, on all the taxable property subject to such tax, without its being necessary to make other by-laws or orders for that purpose.

In the case of refusal or neglect on the part of the local corporation to pay the portion which has been imposed upon it, such portion may be recovered from it in the manner set forth in article 951.

Decisions. — 1. The collecting of taxes due to county council is effected by the help of local municipalities and their officers; the county corporation has not the right to proceed directly against the tax payers by action or otherwise. C. Q. B., Quebec, 5 December 1876. *Roberge* vs *The Corporation of Lévis.* 7 R. L., 642.

2. Taxes imposed for county purposes, in virtue of a *procès-verbal* ordering the building of a bridge, cannot be recovered from local corporations by the county corporation; the county corporation has its recourse against the rate-payers bound under the act of apportionment. C. C. Bedford, 30 September 1885. Mathieu J. *Corporation of Missisquoi County* and *Corporation of the parish of St. George of Clarenceville.* 13 R. L. p. 660. This judgment was reserved by the Court of Review which rendered the judgment *supra* under article 491.

3. The taxes imposed upon rate-payers individually by a county council, under a *procès-verbal* and an act of apportionment concerning it, for the opening and the making of a road under its jurisdiction, or imposed upon properties interested in a public work, may be recovered in the name of the county corporation by an action before a justice of the peace, against the rate-payers bound to the payment of those taxes under the act of apportionment; but the taxes imposed by county council upon local municipalities can be recovered only by local municipalities. *Simard* vs *Corporation of Montmorency County.* C. Q. B.; 4 Q. L. R. 208.

4. A municipal body cannot recover the costs of work, unless it has paid them in advance to the contractor. The cost of a county work is recoverable from rate-payers and not from local municipalities; the collection of such debt is to be made by imposing a tax according to the share of each interested party by the secretary-treasurer of each municipality, as mentioned under section 59 of municipal act. C. Q. B. *Corporation of the parish of St. André* and *Corporation of Argenteuil County.* 3 R. L. 374.

940. The secretary-treasurer of the county council is bound, before the fifteenth day of May in each year, or at any other period fixed by the council, to apportion, with the approval of the latter, among all the local corporations of the county municipality, the sums payable to the county council during the current year, in virtue either of municipal orders or of former apportionments in force, and to transmit to the office of the council of each local corporation a certified copy of such apportionment.

Whenever a new sum of money is imposed by the county council after the period fixed upon by this article, a new apportionment

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must be made and transmitted in the same manner by the secretary-treasurer.

941. Taxes imposed for county purposes under a *procès-verbal*, or act of apportionment relating to any *procès-verbal*, or made under articles 490 or 491, are collected by the officers of the local municipalities in which is situated the taxable property affected, in the same manner as taxes imposed for local purposes.

A statement of such taxes must be without delay transmitted to the mayor of the local municipality or to the persons entrusted with their collection, if such persons are not those whose duty it is, under the control of the county council or the county delegates, to attend to the execution of the *procès-verbal*, of the act of apportionment, of the by-law, or of the law.

In default of the municipal officers levying or causing such taxes to be levied during the two months next after the forwarding of such statement, the secretary-treasurer of the county council possesses, for the purpose of levying and collecting such taxes, all the rights and powers had by such local officer under section second of chapter first of title tenth of this code, and the payment of the taxes in such case shall be made at the office of the secretary-treasurer of the county council.—R. S. Q. 6197.

Decisions. — 1. The mode of recovering taxes mestioned under this article, does not remove the right of recovering by direct action taxes imposed under a *procès-verbal* for county purposes; and the county corporation can take action against the local corporation to recover taxes imposed under such *procès-verbal*. The apportionment under article 814 M. C. is an apportionment of work and may be omitted. When a *procès-verbal* passed by a county council for the building of a bridge states that there shall be no apportionment, and fixes the share that each local municipality will have to pay for the cost of this bridge, each corporation becomes directly debtor to the county corporation for its share. *Corporation of Missiquoi County* vs *Corporation of St. George of Clarenceville.* S. C. R ; 10 R. L. 315 ; 9 L. N., 411.

2. The taxes imposed upon rate-payers individually by a county council, in virtue of a *procès-verbal* and of an act of apportionment referring to it for the making of a road under its jurisdiction, or imposed upon properties interested in a public work, may be collected in the name of the county corporation by an action before a justice of the peace against the parties bound to pay the taxes by apportionment ; but the taxes imposed by the county council upon local municipalities cannot be recovered from rate-payers except by local municipalities. *Simard* and *The Corporation of Montmorency.* S. C. 4 Q. L. R., 208.

3. A county council which passed a by-law to subsidize a railway company by subscribing for shares in that company, which had issued guaranteed bonds, is not accountable to each local municipality for the administration of the funds which may have been paid to it by those local municipalities and which became its own by such payment. But in an action by the county corporation against a local corporation, though not accountable, the county corporation will be forced to give to the Defendant a statement mentioning if any dividends have been paid

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upon the subscribed capital stock, if part of that capital has been sold, for what amount, and what have been the cost of administration. *Corporation of the township of Compton* vs *Corporation of Compton County.* 3 Rev. de Jur., 557. Archibald J.

941*a*. The secretary-treasurer of every county council shall, if necessary, prepare in the month of November of each year, a statement showing in as many distinct columns :

1. The names and calling of all persons indebted to the county corporation or to its officers for taxes imposed for county purposes, under a *procès-verbal* or an act of repartition relating to a *procès-verbal* or made in virtue of articles 490 and 491, as set forth in the act of repartition ;

2. The amount of all taxes remaining due to the county corporation and to the officers of the county council by each of such persons or by unknown persons ;

3. The costs of collection due by such persons ;

4. The description of all real estate liable for the payment of the taxes mentioned in such statement ;

5. The total amount of taxes, interest and costs affecting such real estate;

6. The reasons why such sums were not collected.

Such statement shall be submitted to the county council and approved by it.

942. All municipal taxes imposed on taxable property for local or county purposes must be fairly apportioned according to the valuation roll in force, on all property subject to the payment of such taxes, in proportion to its taxable value, that is to say, in proportion to the actual value of the real state, and the estimated value of property declared taxable under article 710, save the case specified in article 783.

942*a*. In determining the value to be given to lands used for agricultural purposes and situated within the limits of town or village municipalities, regard is had to the value of such lands for agricultural purposes simply, except for that part fronting on streets and roads to the ordinary depth of building lots in that locality, which may be taxed according to its real value.—R. S. Q. 6198.

Decision. — The Can. Pac. R.R., appellant, acquired over 200 arpents for railway purposes, but changing its intention leased them by annual lease for pasturage. Appellant also prepared a subdivision of the lands into lots and took steps for its cadastration and also advertised the lots for sale. Upon the lands being valuated according to this change, the appellant petitioned for reduction on the ground that they ought to have been valued as agricultural lands only.

Held (confirming the decision of the council) that the property was

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rightly valued according to its real value and not as to its value for agricultural purposes. *The Canadian Pacific Railway* vs *Corporation of Verdun*. 20 Q. O. R., 194. C. C.

943. The council of every local municipality may, by a resolution, exempt from the payment of municipal taxes, for a period not exceeding twenty-five years, any person who carries on any business, trade, or manufacturing enterprise whatsoever, or the proprietor of any bridge, as well as the land used for such business, trade, manufacturing enterprise, or bridge ; or may agree with such person for a fixed sum of money payable annually for any period not exceeding twenty-five years, in commutation of all municipal taxes.

It may also exempt the poor of the municipality and their property from the payment of municipal taxes.

Such exemption or agreement does not extend to work upon water-courses, boundary ditches, fences, clearances or front roads connected with taxable property so exempted or commuted.—R. S. Q. 6199.

Decision. — A municipal corporation may exempt from taxes not only manufactures mentioned in a resolution passed to that effect, but also all the new industries which may be established in future in the municipality, and such exemption includes special taxes imposed for the building of a railroad. *Corporation of Chambly village* vs *Lamoureux*. C. Q. B. 13 ; R. L. 312.

944. The local council may, whenever it deems advisable, authorize by resolution the secretary-treasurer or any other officer, to add a sum not exceeding ten per cent, to all taxes to be levied on the taxable property in the municipality to cover losses, costs and bad debts.

945. Municipal taxes or contributions in labor or materials are always convertible into money, after they fall due.

946. All municipal taxes are regarded as privileged debts exempt from the formality of registration.

947. Taxes bear interest at the rate of six per cent, from the expiration of the delay during which they ought to be paid, without it being necessary for such purpose that a special demand of payment be made. Neither the municipal council nor its officers can remit such interest.

948. All municipal taxes imposed on any land may be collected from the occupant or other possessor of such land as well as from the owner thereof, or from any subsequent purchaser of such land, even when such occupant, possessor or purchaser is not entered on the valuation roll.

Decisions. — 1. In *Hogan* and *The City of Montreal*, 1 M. L. R., C. A. 66.

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and 7 L. N., 379, it has been held that municipal taxes are not payable day by day, but are indivisible and are due by the proprietor and possessor of the real estate subject to assessment at the time those taxes were imposed; and the fact that a person not being proprietor of real-estate should have been mentioned on the roll and assessed as such proprietor does not render that person responsible.

2. The arrears of taxes imposed upon real estate may be recovered from the owner, although his name does not appear on the roll as proprietor, if in fact he was so at the time the taxes were imposed. *The City of Montreal* vs *Robertson*. 31 L. C. J., 148. C. S.

949. Any person, not being the proprietor, who pays municipal taxes imposed in consideration of the land which he occupies, is subrogated without other formality in the privileges of the corporation on the moveable or immoveable property of the proprietor, and may, unless there be an agreement to the contrary, withhold from the rent or from any other debt which he owes him, or recover from him by personal action, the amount which he has paid in principal, interest and costs.

950. All arrears of municipal taxes, except in the case of articles 402 and 495, are prescribed by three years. This provision is subject to the application of articles 2267 and 2270 of the civil code.

951. The payment of municipal taxes may be also claimed by an action brought in the name of the corporation, before any justice of the peace, before the commissioners' court for the summary trial of small causes of the parish or municipality, if there be one, before the magistrates' court, or before the circuit court for the county or district, as well against persons absent from the municipality as against those present therein.—R. S. Q. 6200.

Decisions. — 1. Actions to recover municipal taxes ought to be brought before the superior or circuit court according to the amount claimed, the C. C. P. containing no exceptional provision with regard to such taxes such as those referring to school-taxes and for church repairs. C. Q. B. *Corporation of Irlande Nord* vs *Mitchell*. 13 Q. L. R., 32.

2. School-taxes cannot be claimed before the Superior Court in an action for municipal taxes. It is not necessary to fyle the original of the tax roll. Proof of public notice, under art. 910 M. C. and certified extracts from the tax roll are sufficient. *Corporation of Acton Vale* and *Felton*. 24 L. C. J., 113.

3. The district magistrate has jurisdiction for the recovery of municipal taxes, what ever the amount may be.

Under articles 939 and 951 of municipal code, a local corporation may be sued before a district magistrate for the recovery of a county debt, due to a county corporation.

A district magistrate has jurisdiction in such cases even if he is a rate-payer in one of the interested municipalities. *Corporation of Parish of St. Guillaume* vs *Corporation of Drummond County*. R. L., 562. C. A.

4. Taxes are due as soon as the notices required under art. 960 have been given by the secretary-treasurer. A rate-payer has no right to a

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notice before action, nor to a demand of payment with detailed account. Those formalities are required only when it is preceded by seizure in virtue of art. 962. M. C. *Corporation of Frelighsburg* vs *Davidson*. C. C. 1 O. R ; S. C. 371.

5. When a *procès-verbal* concerning a by-road running through several municipalities mentions who are the rate-payers bound to the payment of the cost, the action to recover should be instituted in the name of the county corporation.

The demand of payment required under article 961 is a necessary preliminary condition of the right of action. The action itself cannot replace such demand, which ought to be made by a special officer, appointed by the law, and giving thereby a delay of fifteen days to the rate-payers after the demand.

The fact that the corporation has paid the cost of this *procès-verbal*. does not give the right to the corporation to sue without having fulfilled these formalities. *Corporation of Portneuf County* vs *Dion*. 9 O. R: S. C. 525. Casault J.

952. The local council must, on the requisition of the school commissioners or trustees of any school municipality situated within the limits of the local municipality, accept the school assessment roll or the certified extract therefrom presented by them, and order the secretary-treasurer to collect such taxes in the same manner and at the same time as municipal taxes.

953. Taxes levied by the local council for public works in each of any townships united to form a distinct local municipality, under article 39, are expended, less the costs of collection and of management, in the townships in which such taxes were levied, unless the county council otherwise orders.

954. It is the duty of the secretary-treasurer of every local council to make a general collection roll each year during the month of October, or at any other time fixed by the council.

He must also make a special collection roll, whenever a special tax has been imposed after the making of the general collection roll, or whenever he is ordered so to do by the council.

955. Every collection roll must contain, in different columns :

1. The names and quality of each proprietor who is a rate-payer entered on the valuation roll, or the word "unknown", if the proprietor in unknown ;

2. The names and qualities of every occupant of taxable land who is not the owner thereof, if such occupant is known, whether he is or is not entered upon the valuation roll ;

3. The actual value of the taxable real estate of each rate-payer ;

4. The value of the property of each rate-payer, declared taxable in virtue of article 710 ;

5. The total value of the taxable property of each rate-payer ;

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6. The amount of taxes payable by each rate-payer.

Decisions. — 1. If the tax roll shows the share of taxes of any rate-payer to be higher than that mentioned under a by-law of assessment, such roll is good except for the rate-payer and for the excess. *Dubois* vs *The Corporation of Village of Acton Vale.* 2 R. L., 565.

2. All the formalities prescribed by the M. C. referring to the tax roll must be strictly observed ; if not, the taxes imposed cannot be exacted, even if the rate-payers should have acquiesced in informalities. C. Q. B. *Corporation of the Village of Chambly Basin* vs *Scheffer.* 1 M. L. R. 42 ; 7 L. N., 390.

3. Simple irregularities in the mode of proceeding to make the assessment roll which are sufficient upon proceedings to that effect, to have said roll declared null and void, will not justify proceedings to recover the amount paid under said roll, when such amounts have been voluntarily paid. *Bain* and *The City of Montreal.* 8 Sup. C. rep. 252 ; D. C. A. 221 ; 17 R. L., 559.

4. The assessment roll must correspond with the *procès-verbal* under which it is drawn. It cannot be validy extended to works not mentioned in such *procès-verbal,* 8 C. Q. B. *Grenier* vs *Lacourse.* 2 O. R ; C. A., 445.

956. If the collection roll is general, it must set forth in detail, in as many distinct columns, all taxes due since the making of the last general collection roll, distinguishing therein local taxes from those which have been imposed for county purposes.

957. In every local municipality in which taxes have been imposed in virtue of article 584 or 595, the secretary-treasurer must enter on the general collection roll in the column for the names of rate-payers, the names and qualities of all persons liable for such taxes, and in separate columns the amounts due.

958. The secretary-treasurer must enter on the general collection roll and collect all municipal taxes payable in or converted into money, ordinarily collected by other municipal officers, and due or payable either to the corporation or to the officers of the council, by persons occupying taxable property in the municipality, provided that a statement, certified and attested under special oath, be transmitted to the office of the council before the making of the general collection roll.

959. If the municipal council has ordered, by resolution, that the collection of school taxes be made at the same time and in the same manner as municipal taxes, the secretary-treasurer must enter on the general collection roll the amount of such taxes, collect them and remit them forthwith to the secretary-treasurer of schools.

960. The secretary-treasurer, after having completed the collection roll, gives public notice by which he announces that the general collection roll, or the special roll, as the case may be, has been com-

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pleted and is deposited at his office, and requires all persons subject to the payment of the taxes or sums therein mentioned, to pay the same at his office, within the twenty days next following the publication of such notice.

961. At the expiration of such delay of twenty days, the secretary-treasurer must make a demand of payment of all taxes and sums of money entered in the collection roll, and remaining uncollected, from the persons liable for the same, by serving or causing to be served upon them a special notice to that effect, accompanied by a detailed statement of the sums due by them.

Until the fee for the service of such notice is fixed by the council, in virtue of article 471, the secretary-treasurer is entitled to twenty-five cents for the service of such notice, notwithstanding any municipal by-law in force at the time when this code comes into force.

Decisions. — 1. A demand of payment for taxes, under this article addressed to a woman separated as to property, and conveyed to her in an envelope with her husband's name on it, is sufficient, and the circuit court has jurisdiction in such cases, whatever the amount may be. C. C. Quebec, 1880 Casault, J. *Corporation of the Village of Bienville* vs *Gillespie et vir.* 6 Q. L. R., 346.

2. Vide, under art. 951. *Corporation of Portneuf* vs *Dion.*

962. If, after the fifteen days next following the demand made in virtue of the preceding article, the sums due by the persons entered on the collection roll have not been paid, the secretary-treasurer may levy them together with cost, by seizure and sale of the goods and chattels of such persons which may be found in the municipality.

Decisions. — 1. Held that a usufructuary is responsible for taxes. S. C. Montreal 20 September, 1872, Beaudry, J. *The Corporation of Montreal* vs *Contant.* 2 C. O. R., 482.

2. A donor cannot, by a clause of unseizability prevent his lands from contributing to public charges, as well as to municipal taxes. And notwithstanding such a clause, the lands can be sold for municipal taxes. *City of Montreal* vs *Bronsdon.* 3 M. L. R., 146.

3. School-taxes cannot be sued for nor recovered in the Superior Court in an action for arrears of municipal taxes, and it is not necessary to fyle the original of the collection roll. Proof of the public notice required under article 960. M. C. and true copies of the collection roll are sufficient. Arrears of taxes due by a deceased person, can be recovered from his universal legatee. *Corporation of township of Acton* vs *Fulton et al.* 24 L. C. J., 113.

4. The City of Montreal can recover from one of the undivided owners, when his name is on the collection roll, all the taxes imposed upon the real-estate belonging to him as undivided owner. *Cassidy* vs *The City of Montreal.* 17 R. L., 613.

5. Arrears of taxes and municipal assessments imposed upon real estate can be recovered by personal action from the actual owner, although such taxes and assesments may have been imposed when the real estate belonged to a former owner. C. C. *Corporation of the parish of Ste. Bridgitt* vs *Murray.* 14 R. L., 227.

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6. Assessments can be collected only from those, whose names are mentioned on the roll. *The City of Montreal* vs *Lyster*. 31 L. C. J., 28. (Evidently that decision does not now apply considering article 948 of M. C.

7. The Corporation of the City of Montreal in exacting, under threat of execution the payment of a tax imposed by a collection roll apparently possessing all legal formalities, but which afterwards was declared null and void, by the courts, cannot be considered in bad faith, under art. 1049. C. C. and consequently is held to reimburse only the sum collected with interest from the date of payment. C. Q. B. Montreal. *Wilson et al., Appellant*, and *The City of Montreal, Respondent*. 24 L. C. J., 222.

8. Section 88 of chapter 51 of Quebec Statutes 37 Vic., gives the right to the corporation of the City of Montreal to seize and sell for the payment of taxes, the real property of the party who owes taxes, and all the goods and chattels in his possession.

Held : — That when goods and chattels belonging to the wife separated as to property have been seized in the husband's domicile for taxes by him due, a writ of injunction will be granted ordering the corporation to desist from selling those goods and chattels. Co-habitation does not destroy the right of the wife separated as to property to hold in her own right. S. C. 30 April 1877. Johnson, J. *Green and vir* vs *The City of Montreal*. 22 L. C. J., 128.

963. Such seizure and sale are made under a warrant signed by the mayor of the council, or by the warden of the county, as the case may be.

Such warrant is addressed to a bailiff, and must be executed by that officer under his oath of office, according to the same rules and under the same responsibilities and penalties as a writ of execution *de bonis* issued by the circuit court.

The mayor or warden, as the case may be, in giving and signing such warrant, does not incur any personal responsibility ; he acts under the responsibility of the corporation in whose interest the distress is made.—R. S. Q. 6201.

Decisions. — 1. In an action for damages against a corporation for a writ of seizure illegally issued, the corporation has not the right to a month's notice, under art. 22. C. C. P. In a case of a writ of seizure illegally issued against a party owing no taxes, the corporation will be condemned to pay damages. S. C. R. *Blain* and *The Corporation of the village of Granby*. 18 L. C. J., 182 ; 5 R. L., 180. *Bell* and *Corporation of Quebec*. S. C. 2 Q. L. R., 305.

2. Municipal corporations are bound to observe strictly the formalities prescribed by law, in exacting from rate-payers payment of taxes, and specially in issuing a writ of seizure to force the payment of such taxes. The formalities ordering public and private notices to be given by municipal corporations of all judiciary proceedings which are required in order to seize the property of a debtor are essential. Upon an action in damages by a rate-payer against a corporation, for illegal seizure, it is for the corporation to prove that the seizure is legal and that all formalities have been observed, even if the Plaintiff should have alleged in his declaration, that the seizure issued against him was illegal and malicious, without specially alleging that the formalities had not been

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observed. C. Q. B. *Matthews, Appellant,* and *The Mayor, the aldermen and the Citizens of the City of Montreal, Respondent.* 1 R. L., 610.

3. A municipal body which has the right to issue writs of seizure for the payment of taxes due to the municipality is an inferior tribunal, and a writ of prohibition can be issued against it, when it has exceeded its jurisdiction. C. C. Sorel, Loranger, J. *Ex-parte James Armstrong, petitioner.* 1 R. L., 48.

4. A writ of prohibition cannot be legally issued against a corporation to stop proceedings on a writ of seizure signed by the mayor for the payment of taxes, since the writ of prohibition can be issued only against a court of inferior jurisdiction which exceeds its rights. S. C. R. *Blain, Petitioner on the writ of prohibition* and *Corporation of Village of Granby, Respondent,* 18 L. C. J., 180.

5. A writ of prohibition will not be issued to stop the sale of the goods and chattels of a rate-payer, when it appears, on the face of the proceedings, that there is no excess of jurisdiction although there might be an error on the part of the corporation in imposing the taxes to be collected. C. Q. B. *The Mayor et al., of Sorel, Appellants* and *Armstrong, Respondent.* 20 L. C. J., 171.

964. The day and place of sale of the moveables and effects so seized must be announced by the bailiff by public notice, in the manner prescribed for judicial sales of moveables.

Such notice must also state the names and quality of the person whose effects are to be sold.

965. If the debtor is absent or if there is no person to open the doors of the house, cupboards, chests, or other closed places, or in the event of refusal to open the same, the seizing officer may, by an order of the mayor or of any other justice of the peace, cause the same to be opened by the usual means, in presence of two witnesses, with all necessary force, without prejudice to coercive imprisonment, if there be a refusal, violence or other physical obstacle.

966. No opposition or claim founded on a right of property or privilege on the moveables and effects seized can prevent such seizure and sale, nor the payment of the taxes out of the proceeds of the sale, unless a sum of five dollars, or a sum equal to that claimed in and by the warrant of distress, if such sum does not exceed five dollars, be at the same time deposited in the hands of the secretary-treasurer.

Such opposition is further made, heard and adjudicated upon in the same manner as the one made under article 970.

967. The sum deposited is returned to the person who paid the same, if the conclusion of the opposition or demand are granted; if not, it goes towards the payment of the costs incurred.

968. The proceeds in money of the sale of the effects seized, the costs of seizure and sale being deducted therefrom, are applied by

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the secretary-treasurer to the payment of the amounts which appear on the collection roll, with interest and costs.

The surplus, if any, is paid by the secretary-treasurer to the person whose effects were so sold, or is retained by the secretary-treasurer, in case claims are made against it, until a decision has been rendered, on petition to that effect, by the magistrate's court or the circuit court of the county or district. If the claim is admitted by the defendant, the moneys are paid by the secretary-treasurer to the claimant.

969. Whenever any land subject to the payment of municipal taxes has been seized and sold by law, or is the object of a petition for ratification of title or for expropriation, the secretary-treasurer must produce the claim of the corporation, by filing within the required delay, at the office of the sheriff or of the prothonotary, a detailed statement of such claim, certified either by the mayor of the council or by himself, together with the necessary vouchers.

970. Every rate-payer who is required to pay, either as municipal or school taxes, an amount greater than that which he owes, may plead such fact by exception to any action or claim, or by opposition to any seizure of his moveable property and effects, made under article 962.

Such opposition must be accompanied by an affidavit attesting the truth of the allegations it contains, be served on the officer entrusted with the execution of the warrant of seizure, and be returned within the eight days next following, before the circuit court for the county or district, or before the magistrate's court at its next session. It is subsequently heard and decided according to the ordinary rules of procedure of the court.

The opposition delays the sale, provided it is accompanied by an order for that purpose, signed by the judge or by the district magistrate or by the clerk of the court before which it is returnable.

Decision. — **Appeal will lie from a judgment rendered by the Circuit Court in a case were proceedings are taken under this article. The Court of Queen's Bench has jurisdiction to permit a renewal of security if it is irregular. C. Q. B.. *Montreal Cotton Co., Appellant*, and *Corporation of the town of Salaberry, Respondent*, 9 R. L. 551 ; 2 L. N. 338 ; 3 L. N. 317.**

971. The secretary-treasurer may, under the authority of the local council, and at the expense of the corporation, employ one or more persons to assist him in collecting the municipal taxes, for whose acts, omissions or neglect he and his sureties are, nevertheless, responsible.

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CHAPTER SECOND

MUNICIPAL DEBTS

SECTION I.—GENERAL PROVISIONS.

972. The principal and interest of any loan or debenture may be made payable in the province or elsewhere, either in the currency of Canada or of the country where the same are payable.

973. The principal, interest and costs of any debt contracted by a county corporation for general purposes are payable to the county council by all the local corporations of the county municipality, and are apportioned and levied in the same manner as taxes imposed by the county council.

974. In every by-law made by a county council, ordering a loan or an issue of debentures to be made for the purpose of aiding in the construction of any wooden or iron railway, or any other public work to which the corporation of one of the local municipalities of the county municipality has already contributed in its corporate name, it may be stipulated that the amount of the contribution granted by the local council, calculated on the amount of its valuation roll in force at the time such last contribution was ordered, be taken and considered as forming part of the aid granted by the county corporation, to the amount of its share in such aid.

975. In any such case, it is valid for the council of the local municipality, if the aid which it has granted in the name of the local corporation must be given by the debentures, and if such debentures are not issued, to cancel such aid to the amount of its share in the contribution granted by the county council. If such debentures have been issued, the holders thereof may exchange them for debentures of the county corporation, by transferring to such county corporation an amount of the stock of such local corporation equivalent to such exchange, with the consent of the local corporation, the council whereof, in any such case, must transfer to the county corporation its share in the work represented by the debentures exchanged.

976. Until such cancellation or exchange has been made, the county council must, in apportioning the tax to be levied under its by-law, make a deduction from the portion of the tax imposed on the corporation of such local municipality, proportionate to the amount of the aid granted by such corporation.

977. The whole debt contracted by any county corporation cannot, at any time, exceed twenty per cent of the value of the taxable property of the municipality.

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978. No local council can, by itself, contract debts for any amount exceeding twenty per cent of the taxable property of the municipality, such amount to include the share which such council has to contribute towards paying the debt of the county corporation.

978*a*. The taxes intended to pay the interest upon municipal debentures, as also those intended for the payment of a sinking fund, or for the redemption of such debentures, shall be imposed or levied according to the last valuation roll in force in the municipality.

It is the duty of the secretary-treasurer to make each year, until the payment or redemption of the debentures, a special collection roll, apportioning on the taxable properties subject thereto, according to their respective value as shown on such valuation roll, the amount of the tax imposed for the interest and for the annual payment to the sinking fund.

Decision. — In a sale of immoveable with warranty, the vendor is not bound to reimburse to the buyer the amount of a special tax affecting such immoveable, when said tax has been levied and collected every year, after the sale, in the same manner as other taxes upon all properties situated in the municipality, for the payment of a municipal debt before the sale. *Thibault* and *Robinson*. S. C. 1 O. R ; S. C., 286.

979. The provincial secretary must compile annually in the month of June, from the returns transmitted to his office in conformity with article 168, a statement in tabular form shewing :

1. The names of all the municipal corporations indebted ;

2. The amount of the debt of each of such corporations ;

3. The amount of interest due by them ;

4. The value of the moveable and immoveable property belonging to them ;

5. The amount of the valuation of taxable property in each of the municipalities, the corporation whereof is indebted ;

6. The total rate of taxation or assessment in the dollar, levied for any purpose whatsoever upon taxable property or only upon taxable real estate in such municipalities.

A copy of such tabular statement must be forwarded by the provincial secretary to each branch of the legislature, within the first fifteen days of the following session.—R. S. Q. 6203.

980. The loans contracted and the debentures issued or the issue of which has been authorized before the promulgation of this code, in conformity with the acts respecting the municipal loan fund, and remaining unpaid, continue to be governed by the provisions of the acts relating thereto.

The amounts of such loans or debentures are repayable, the taxes

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levied to discharge them are apportioned and collected, even in cases where the corporation is in default, and the duties and obligations of the municipal councils and officers regarding such loans or debentures must be discharged, until the same have been wholly paid and redeemed, in the same manner as if this code had not been promulgated, subject nevertheless to the application of article 978*a*.—R. S. Q. 6204 ; R. S. C., ch. 83.

SECTION II.—SPECIAL PROVISIONS RESPECTING MUNICIPAL DEBENTURES

981. Every municipal debenture must specify :

1. The name of the corporation by which it is issued ;
2. The by-law authorizing the issue thereof ;
3. The amount for which it is given ;
4. The rate of interest payable per annum ;
5. The time and place of payment both of interest and principal ;
6. The date of issue.

It must also bear the signature of the head of the council or of any other person authorized by the council to sign it, as well as that of the secretary-treasurer.

Decision. — When a municipal by-law granting aid to a railway company does not contain any provisions stating that the conditions inserted in the by-law shall also be inserted in the debentures to be issued in virtue of the said by-law, and if those conditions are previous to the issue and to the delivery of the debentures, the latter ought to be issued without any condition, and in such case the debentures containing the conditions of the by-law shall not be considered as a legal tender. *McFarlane* vs *The Corporation of St. Césaire.* C. Q. B ; 2 M. L. R., 160 ; 14 Sup. C. Rep. 738 ; 10 L. N.,180.

982. It must further contain all provisions necessary to carry into effect the intent of the by-law in virtue of which it is issued.

983. The interest on debentures is payable half-yearly.

984. Every debenture is made payable either to the bearer, or to any person named therein, or to the person named therein, or the bearer, or to the person named therein or to order.

985. Debentures can be issued for a sum less than one hundred dollars, and be made payable less than five, or more than thirty years from the date thereof.

986. If the debentures are payable after five years from the date of their issue, the annual tax levied for payment of the yearly interest and for the sinking fund can be imposed only on the taxable real estate of the municipality.

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987. Any municipal debentures payable to bearer, or to any person named therein, may be transferred by mere delivery.

Any municipal debenture payable to a person named therein, or to a person named therein or order, may be transferred by either general or special endorsation. When it is endorsed generally, it is transferable by mere delivery.

Such transfer vests the property thereof in the holder, and gives him the right to maintain an action thereupon in his own name.

988. Any debenture may contain a stipulation to the effect that the sum annually carried to the sinking fund be, with the consent of the lender, returned to such lender or his representatives, insead of being invested in the manner provided by the by-law. In any such case the debenture is not redeemable at expiration of the delay fixed by the by-law, and it is deemed to have been paid in full and discharged by the payment of the annual amount of the interest and of the sinking fund specified in such debenture.

Note. — Whenever a municipal corporation of a city, town, village or any other municipality, shall have contracted a loan, with respect to which it is bound to invest a sinking fund, it may use such sinking fund, for the purpose of redeeming the bounds issued by it for such loan : provided that the interest on the debentures so redeemed, shall in future, be employed in the same manner as the sinking fund. 42-43 Vic., ch. 42, S. 1.

989. The council of any corporation which, either before or after the coming into force of this code, issued debentures redeemable at the expiration of a certain delay, may, with the consent of the holder, exchange the same for debentures of equal value, payable in the manner set forth in the preceding article.

989*a*. The corporation of any municipality which has issued debentures and which has been unable to invest the sinking fund intended for their ultimate redemption may, in order to provide for the payment of any balance due on such debentures at their maturity, borrow on the credit of such municipality a sum sufficient to pay such balance.

The council of such municipality may, by by-law approved of by the electors in the ordinary way, authorize its mayor or warden, as the case may be, to sign and execute an obligation to cover such loan, which shall stipulate for its payment by annuities extending over a period not exceeding twenty years, and the last of which shall operate as and be a final extinguishment of the loan; or

It may authorize the warden or mayor to sign and execute as many obligations as there are years in the period during which the payments are to be made (and which shall not exceed twenty) each for an aliquot part of the loan, with annual interest at a rate not

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exceeding six per cent, the first of which shall be payable in one year from the date of its execution, the second in two years, and so continuing during the stipulated term of years.

The sum required to make said annual payments, with the interest on the outstanding debt, shall be levied, collected and paid each year, being based upon the valuation roll in force at the term of such apportionment.—53 Vic., ch. 64, s. 3.

990. The secretary-treasurer of any corporation, the council whereof has passed a by-law for the purpose of raising money by the issue of debentures, must before the negotiation, sale or promise of sale thereof, transmit to the registrar of the registration division in which such municipality is situated, and to the provincial secretary, an authentic copy of the by-law authorizing the issue of debentures, together with a return showing :

1. The nature and object of such by-law ;
2. The amount to be borrowed thereunder ;
3. The number of debentures to be issued ;
4. The amounts thereof respectively ;
5. The dates at which they respectively fall due ;
6. The value of the moveable and immoveable property belonging to the corporation ;
7. The amount of the privileges and hypothecs to which the immoveable property of the corporation is subject ;
8. The amount of the valuation of the taxable property in the municipality ;
9. The annual rate of assessment in the dollar required to liquidate the debentures.—R. S. Q. 6205.

991. The secretary-treasurer of every corporation which before the promulgation of this code, shall have issued debentures without complying with the two first sections of chapter eighty-four of the Consolidated Statutes of Canada, must transmit, within three months after the coming into force of this code, to the registrar of the registration division in which the municipality is situated, authentic copies of all the by-laws theretofore made for the purpose of raising money by the issue of debentures, together with a return shewing :

1. The nature and object of each by-law authorizing or ordering an issue of debentures ;
2. The amount of the debentures issued ;
3. Their respective amounts ;

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4. The sums already paid or redeemed by the corporation on account of such debentures ;

5. The balance due and payable on each of the same ;

6. The dates at within they respectively fall due ;

7. The annual rate of assessment necessary to discharge them ;

8. The value of the moveable or immoveable property belonging to the corporation ;

9. The amount of the privileges and hypothecs to which the immoveables of the corporation are subject ;

10. The amount of the valuation of the taxable property of the municipality.

992. The registrar must receive, file and keep in his office, the by-laws which are transmitted to him in virtue of the two preceding articles, and register them in a book kept for that purpose.

993. The by-laws and returns registered or filed in the registrar's office, and all his books of entry are open to the examination of any one desiring to inspect the same during office hours, on payment of the fees established by the following article.

994. The following fees are payable to the registrar for any services required by the articles of this section :

1. For the registration of an authentic copy of any municipal by-law.... .... $2 00
2. For the registration of any report transmitted under articles 990 and 991..... .... 1.00
3. For search, inspection and examination of each copy of a by-law and of the entries which refer thereto.. 1.00

995. Every secretary-treasurer who neglects or refuses to comply with article 990 or 991, within the required time, incurs a penalty not exceeding two hundred dollars, and in default of payment, imprisonment until payment of the fine and costs, which imprisonment ends on payment of the fine and costs, and must not, however, in any case exceed twelve months.

996. In any action upon a municipal debenture, it is neither necessary to allege nor prove the notices, by-laws, statutes and other proceedings in virtue of which such debenture was issued.

997. Every municipal debenture issued under a by-law approved of by the Lieutenant-governor in council, whether before or after the coming into force of this code, is valid, and the amount thereof may be recovered in full, notwithstanding that such debenture was issued illegally and irregularly.

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TITLE ELEVENTH

SALE OF LANDS LIABLE FOR MUNICIPAL TAXES IN DEFAULT OF PAYMENT

CHAPTER FIRST

SALE AND ADJUDICATION OF LANDS.

998. The secretary-treasurer of every county council must, before the eighth day of the month of January in each year, from the statements transmitted to the office of the council under article 373, and from the statement made by himself in virtue of article 941*a*, prepare a list shewing :

1. The description of all the lands situated in the county municipality, on account of which municipal or school taxes are due, together with the names of the owners as mentioned in the valuation roll ;

2. Opposite the description of such lands the amount of the taxes for which they are liable.

Such list is accompanied by a public notice setting forth that such lands are to be sold at public auction, at the place where the sessions of the county council are held, on the first Wednesday of the month of March following, at ten o'clock in the forenoon, in default of payment of the taxes for which they are liable and the costs incurred.— R. S. Q. 6206; 52 Vic., ch. 54, s. 20.

999. The list and the notice which accompanies it must be published in the ordinary manner, and also twice in the *Quebec Official Gazette*, and in one or more newspapers, during the month of January.

Decision. — If an illegal notice of sale is given, e. g. to levy taxes in virtue of a collection roll which is null and void, the sale can be stopped by writ of prohibition. C. Q. B. *Morgan et al.* and *Côté et al.*, 3 L. N., 274.

1000. At the time appointed for the sale, the secretary-treasurer of the county council, or some other person acting for him, sells in the manner prescribed by article 1001 those lands described in the list upon which taxes are still due, after making known the amount to be raised on each of such lands, including therein a part of the costs incurred for the sale, proportionate to the amount of the debt.

In all proceedings had and adopted to effect such sale, the county corporation shall not be responsible for the errors and informalities committed by local municipalities, against which alone shall third

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parties have recourse.—R. S. Q. 6207 ; 52 Vic., ch. 54, s. 21 ; 57 Vic., ch. 51, s. 9.

1001. Any person offering then and there to pay the amount of the moneys to be raised, together with the costs, for the smallest portion of such lands, becomes the purchaser thereof, and such portion of the land must be at once adjudged to him by the secretary-treasurer, who sells such portion of the property as appears to him best for the interest of the debtor.

Decision. — The secretary-treasurer cannot purchase for himself, and if he does so the sale will be declared null and void. S. C. R., Montreal, 29 April 1871, Mondelet, J., MacKay, J., and Torrance, J. *Wicksteed* and *Corporation of Ham North.* 1 Revue Critique, 472.

1001*a*. The secretary-treasurer is entitled to ten cents for each hundred words or figures, for all notices, lists and other documents in relation to the sale of lands indebted for taxes, and further to the repayment of any sum advanced by him to defray the cost of publication in the *Quebec Official Gazette* and in other newspapers, and to one dollar and fifty cents for each certificate of adjudication or for every deed of sale, in addition to the costs of the registration thereof, until such time as such fees are otherwise established by a resolution of the county council.—R. S. Q. 6208.

1002. The purchaser of any land or portion of land must pay the amount of his purchase money immediately upon the adjudication thereof.

In default of immediate payment, the secretary-treasurer either at once puts up the land for sale or adjourns the sale to the following or any other day within eight days, by giving all persons present notice of such adjournment in an audible and intelligible voice.

1003. If at the time of the sale no bid is made, or if all the lands advertised cannot be sold on the first Wednesday in March, the sale must be adjourned to the following or any other day within eight days, in the manner set forth in the last provision of the preceding article.—R. S. Q. 6209.

1004. On payment by the purchaser of the amount of his purchase money, the secretary-treasurer sets forth, in a certificate made in duplicate and signed by himself, the particulars of the sale, and delivers a duplicate of such certificate to the purchaser.

The purchaser is thereupon seized and possessed of the land adjudged, and may enter into possession thereof, subject to the same being redeemed within the two years next following, and to the constituted ground rents.

The purchaser, however, cannot carry off timber from such land during the first year he is in possession thereof.—R. S. Q. 6210.

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1005. The corporation of the local municipality in which the immoveables put up for sale are situated, may bid at the sale of such immoveables and may become the purchaser thereof, through the mayor or the person authorized by the council, without being held to pay forthwith the amount of the purchase money.

1006. A list of lands sold under the provisions of this title, setting forth the name and residence of the purchaser and the price of the sale, must be transmitted by the secretary-treasurer of the county council to the office of every local municipality in which such lands are situated, within the fifteen days next after the adjudication ; and the secretary-treasurer of the local council must, without delay, give a special notice to the proprietors or occupants of such lands, of the sale thereof and of the particulars set forth in the list transmitted by the secretary-treasurer of the county.

Decision. — Negligence in observing the provisions of art. 1001 M. C. and the lack of notice required under art 1006, render a sale by a county council null and void.

If a demand of payment for taxes due under art. 961 M. C. has not been made, all subsequent proceedings are null and void.

The sale of real-estate by a county council, for taxes not due, or for an amount exceeding what is really due, is null *ab initio*. A sale is also null and void, when the goods and chattels upon real-estate have not been discussed before the sale of such real-estate. *Clifford* and *Germain*. 1 Rev. Jur., 234. Taschereau, J.

1006*a*. The secretary-treasurer of each county council shall, within eight days after the adjudication thereof, transmit to the registrar a list of lands sold for taxes under the provisions of this code ; and for such purpose he is entitled to twenty cents for each piece of land mentioned in the list furnished by him, of which one half is transmitted by him to the registrar with the list to cover the fees of the latter for the deposit and entry and for the cancellation thereof.

The omission to forward such list or to mention any lot therein does not invalidate any proceedings in the matter in which such omission may occur, but the secretary-treasurer in default is responsible for all damages which result therefrom.—R. S. Q. 6211.

1007. If, within two years from the day of the adjudication, the land adjudged has not been bought back or redeemed according to the provisions of the following chapter, the purchaser remains the irrevocable proprietor thereof.

1008. Such purchaser, upon exhibiting the certificate of his purchase and upon proving the payment of all municipal taxes which, in the meantime, have become due thereon, is entitled, at the expiration of two years' delay, to a deed of sale from the corporation of the county municipality within the limits of which such land is then situated.

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1009. The deed of sale is executed in the name of the corporation of the county by the secretary-treasurer, in the presence of two witnesses who sign it, or in minute before a notary.—R. S. Q. 6213.

1010. The deed of sale must be registered with due deligence, on the demand of the warden or of the secretary-treasurer.

Decision. — The buyer from a primitive owner who took possession and registered, cannot be evicted by a buyer at a municipal sale, who has not taken possession nor enregistered his title. *Caya* vs *Pellerin*. 2 R. L., 44.

1011. The costs of the deed of sale and of the registration thereof are payable by the purchaser, and are exigible before the deed is signed.

1012. All the rights acquired by the purchaser pass to his heirs or legal representatives.

1013. The sale made under the provisions of this chapter is a title which conveys the ownership of the land adjudged. It vests in the purchaser all the rights of the original owner, and purges the land from all privileges and hypothecs whatsoever, to which it may be subject, except claims for constituted ground rents, for seigniorial dues and for rents substituted therefor, and the amounts for which such land may be encumbered for the payment of municipal debentures issued in aid of railways and other public undertakings; and except also the rights of trustees for the amount of any assessment imposed on such land for defraying the cost of building or repairing any church, vestry, parsonage or cemetery, provided that at least eight days before such sale, the chairman of the trustees has lodged with the secretary-treasurer of the county whose duty it is to make such sale, a statement attested under oath before a justice of the peace, establishing the amount of such assessment for which the land is liable.

In all cases, however, in which the land in question has been adjudged and sold before the issue of the letters-patent from the crown, such sale merely vests in the purchaser the right of preemption, or other rights already acquired in relation to such land.—R. S. Q. 6213.

1014. If the land sold does not exist, the purchaser is merely entitled to recover the sum paid by him, with interest at the rate of fifteen per cent per annum.

If the adjudication or sale is declared null on any demand brought to set aside the same, or in any other cause or contestation, the purchaser can only exact repayment of the purchase money paid by him, together with the expenses of necessary repairs and of improvements which have increased the value of the land up to

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such value, unless he prefers to remove the same, with interest upon the whole amount reclaimed at the rate of fifteen per cent per annum.

1015. The action to annul a sale of land made in virtue of the provisions of this chapter, or the right of calling in question the lawfulness thereof, is prescribed by two years from the date of such adjudication.

This right may be exercised by the creditor before any competent court in any manner which he deems desirable, article 100 of this code to the contrary notwithstanding.

Decisions. — 1. The prescription of two years under this article, does not apply to actions in damages against corporations, when the sale has taken place without observing legal formalities. The purchaser in good faith, will be maintained in his adjudication after a lapse of two years, but the local and county corporations by whom the sale has been ordered without the legal formalities will, both of them, be held responsible for the damages suffered by the owner. C. Q. B. *Corporation of Arthabaska County* vs *Barlow*. 14 L. C. J., 226 ; 1 R. L., 759.

2. The prescription of two years runs from the date of the adjudication, and not from the deed of sale. It runs in favor of the purchaser and never in favor of corporations who have caused or ordered the sale ; and who are always held responsible in damages arising from illegal sales, caused by them before or after two years. *Ibid.*

3. A corporation can be called in to defend a rate-payer when it has ordered his real estate to be sold, for taxes which had been paid, and when the rate-payer having sold his real-estate to a third party, is called in warranty by his purchaser who is himself disturbed in his possession by a purchaser from the municipal corporation, even after two years from the adjudication. *Wurtele* vs *Corporation of township of Grantham*. 7 R. L., 547.

4. The local corporation which causes lands to be sold for taxes and the county corporation which sells them at its request, are equally responsible as warrantors towards the purchaser, for illegalities and errors of their respective secretary-treasurers ; and when both corporations admit the irregularities, and the county corporation deposits in court the price of adjudication, the sale may be declared null, even though two years have elapsed since the date of adjudication. Corporations have no right to the notice required under article 22 C. C. P., even though damages are claimed by the conclusions of an action in guarantee. S. C. R. *Bartley, plaintiff* and *Boon, Defendant*, and *Armstrong, Oppenant afin d'annuler* and *Bartley, contesting* and *Armstrong, plaintiff in guarantee*, and *Corporation of County of Beauce* and *Corporation of township of Linière, Defendant in guarantee*. 19 L. C. J., 10.

5. The formalities prescribed by the code, relating to the collection roll, must be strictly observed, under penalty of being unable to claim the taxes imposed even if there is a promise to pay by the interested parties. C. Q. B. *Corporation of village of Chambly Basin* and *Scheffer*. 4 M. L. R. 42 ; 7 L. N., 390.

6. The prescription under this article cannot run against the old proprietor who has always been in possession of the real estate.

A municipal sale null *ab initio*, and one that has been obtained by fraud, will not serve for the acquisition of prescription.

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The mere enregistration of a municipal sale cannot serve for the acquisition of prescription in favor of a purchaser who has never possessed as against an owner who has always been in open and public possession *animo domini*. *Gifford* and *Germain*. 1 Rev. de Jur., 234. S. C. Taschereau J.

1016. If any land described in the list published under article 999 is advertised to be sold by the sheriff, the secretary-treasurer of the county council cannot sell such land, but must without delay transmit to the sheriff a statement of the sums due for taxes and cost of advertising on account of such land, which sums are paid out of the proceeds arising from the sale made by the sheriff.

Such costs incurred by the secretary-treasurer are privileged and rank with municipal and school taxes.—52 Vic., ch. 54, s. 22.

1017. Nevertheless, if on the first Monday of March the proceedings of the sheriff on the sale have been discontinued, the secretary-treasurer may sell the land in the usual manner.

1018. The municipal corporation, in the interest of which the sale of any land by the secretary-treasurer of the county ought to be made may, in the case in which such land is advertised to be sold by the sheriff, and the proceedings are suspended, intervene in the cause and ask and obtain the adoption of any step having for object the rendering of any final judgment.

1019. The demand to set aside or to annul the sale made in virtue of these provisions, and any action to enforce any claim arising from such sale, can be instituted only against the municipal corporation, the council or officers of which are in default.

Decisions. — 1. A corporation can be sued in damages, for an illegal seizure of goods and chattels of a debtor, whose debt is extinguished. *Blain* and *Corporation of Granby*. 5 R. L., 180.

2. A corporation is warrantor for the rate-payer, when it has caused his real estate to be sold for taxes which had been paid. A rate-payer having sold the real-estate to a third party, and being called in guarantee by his buyer, himself disturbed in his possession by the purchaser at the municipal sale, may call the corporation in warranty even after two years from the date of adjudication. *Wurtele* and *Corporation of Grantham*. 7 R. L., 548. *Lorell* and *Learit*. 2 O. R ; C. A., 324.

3. Local and county corporations are both responsible for irregularities effected by the secretary-treasurer of the county corporation in the sale of lands for municipal taxes. *Atkin* and *The City of Montreal*. 14 R. L., 696.

4. The sale, for municipal taxes, of lots belonging to a resident, (the notices being given, and sold as belonging to a non-resident) is null, and confers no rights upon the purchaser. The latter disturbed in his possession, has the right to call in warranty the local and county corporations even after two years from the date of adjudication. And both corporations themselves admitting such nullity ought to be condemned as warrantors to pay each one half of the costs. Such corporations have no right to the notice required under art. 22 C. C. P. although damages are

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claimed by the action in guarantee. *Bartley* and *Boon* and *Armstrong*. 1 Q. L. R., 93.

5. A sale will be set aside, 1o. if at the time of adjudication, the owner is insolvent, and his goods are in the hands of an assignee; 2o. if the owner had then instituted proceedings in licitation to have the real-estates sold and divided. *Armstrong* and *La Société de Construction*. 7. L. N. 51.

6. The duty of the county secretary-treasurer is to adjudge the lot to the bidder who offers to pay the taxes and costs for the smallest part of the farm and he has no right to sell for more. If the does so, he exceeds his authority and the sale is absolutely void. *Imbeau* and *Corporation of Rimouski*. S. C. 17; Q. L. R. 308.

7. The county corporation is not responsible for irregularities committed by the local corporation which ordered the sale, when all proceedings of the county corporation are regular, and no error has been committed by it. *Brunet* and *Corporation of Hochelaga County*. 16. R. L. 166.

8. A secretary-treasurer who conducts the sale cannot buy for himself under penalty of the nullity of the sale. *Wicksteed* and *Corporation of Ham-North*. S. C. R.; 1 C. R. 473.

9. In a case of a sale made *super non domino* of a real-estate, for municipal taxes, the purchaser will have his recourse against the county corporation which has made the sale, and also against the local and school corporations which have ordered the sale; but only for the reimbursement of the amount paid and interest at fifteen per cent. The recourse does not extend to the costs of a petitory action instituted by the purchaser against the true proprietor. *Brunet* and *Shannon*. S. C. 3. O. R.. S. C. 226; *Lovell* and *Leavit*. 2 O. R.; C. A. 324.

10. The formalities prescribed by the m. c. relating to the collection roll ought to be strictly observed, or the taxes imposed under the collection roll cannot be demanded. *Corporation of Chambly Village* and *Scheffer*. 1 M. L. R; C. A. 42.

11. The owner of a land sold for taxes which had been paid, may, after the delay of two years, claim from the local corporation, damages equal to the value of his land. *Mullen* and *Corporation of Wakefield*. S. C. R. Montréal, 24 June 1893.

12. The sale of land for taxes by school trustees, is illegal. More than two years after the adjudication, the purchaser may take a petitory action to obtain possession. The trustees after intervention fyled, admitted the sale to be null and void as having been made *super non domino et non possidente*. They were condemned to pay the purchaser the price of adjudication, and the costs of the action and of the intervention. *Corporation of trustees of Cote St. Paul* and *Brunet*. 1. O. R.; C. A. 79.

1020. The sale made under the authority of the provisions of this title may be rescinded and annulled with the consent of the municipal corporations interested, the owner and the purchaser.

1021. No land sold in default of payment of taxes, under the authority of the provisions of this title, can be resold under the authority of the same provisions in the month of March of the following year.

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CHAPTER SECOND

REDEMPTION OF LANDS ADJUDGED

1022. The owner of any land sold under the provisions of the preceding chapter may, within the two years next following the day of the adjudication, redeem the same, by reimbursing to the secretary-treasurer of the council of the municipality in which such land is situated, the amount laid out for the purchase of such land, including the cost of the certificate of purchase and the notice to the registrar, with interest at fifteen per cent per annum, every fraction of a year to be reckoned as a year.—R. S. Q. 6214.

Decision. — The mode of redeeming land in virtue of articles 1022 and following of m. c. is by reimbursing to the secretary-treasurer the amount paid by the purchaser, and the cost of the certificate, with interest at the rate of fifteen per cent per annum.

The secretary-treasurer has nothing to do with the claim of the purchaser for expenses, improvement and taxes, that being a matter to be settled between the purchaser and the redeeming party. *Bienvenu* and *Corporation of Shefford County.* 4 Rev. de Jur. Lynch, J.

1023. Any person, whether authorized or not, may redeem or recover such land in the same manner, but only in the name and for the benefit of the person who was the proprietor thereof at the time of the adjudication.

When the redemption is made by a person not specially authorized, the secretary-treasurer in the receipt which he gives in duplicate, sets forth the names, quality and domicile of the person who effected the redemption.

Such receipt entitles the person mentioned therein to be reimbursed the amount paid by him with interest at the rate of eight per cent, and secures him a privileged hypothec, ranking next after municipal taxes on the land in question, for the reimbursement of such money, after being registered in the proper registration division, any provisions contained in articles 1994 and 2009 of the civil code to the contrary notwithstanding.

Decision. — A property when sold for municipal taxes redeemed by a person not the owner but subrogated in the rights of the purchaser, is nevertheless redeemed for the benefit of the actual owner.

He cannot refuse after the expiration of two years, to restore the property to the owner; nevertheless he cannot be obliged to restore the property to the owner unless the price paid for redeeming it is reimbursed, with interest at fifteen per cent per annum. *Darling* and *Reeves.* 29 L. C. J. 255. C. Q. B.

1024. The secretary-treasurer must, within fifteen days after the redemption is effected, give special notice thereof to the council of the local municipality in which such land is situated, and to the purchaser, and on demand, remit to the latter the amount paid into

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his hands, less two and a half per cent on the purchased money for his fees.

1025. The purchaser may compel the owner, or the person who redeems the land in the name of the owner, to indemnify him for all useful repairs and improvements made by him on the land so redeemed, unless he removes the same, and also to reimburse him the amount of the taxes paid, and of the public or municipal work performed on account of such land, with interest on the whole at the rate of fifteen per cent per annum, every fraction of a year being reckoned as a year.

This claim bears a privilege in favor of the purchaser upon the land in question.

The purchaser may retain possession of the land redeemed until payment of such claim.

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BOOK THIRD

SPECIAL PROCEEDINGS

TITLE FIRST

EXECUTION OF JUDGMENTS RENDERED AGAINST MUNICIPAL CORPORATIONS

1026. Whenever a copy of a judgment condemning a municipal corporation to pay a sum of money has been served at the office of the council of such corporation, the secretary-treasurer must forthwith pay the amount thereof out of the funds at his disposal, on the authorization of the council or of the head of the council, according to the rule laid down in article 160.

Decision. — The amount of a judgment is not payable by handing over property. The sheriff may levy on the amount raised in accordance with this article. *Corporation County of Drummond* vs *Quesnel*. 19 R. L. 470.

1027. If there are no funds, or if those at the disposal of the secretary-treasurer are not sufficient, the council must, immediately after the service of the judgment of the court, order the secretary-treasurer, by a resolution, to levy on the taxable property of the municipality liable for such judgment, a sufficient sum to pay the amount due with interest and costs.

1028. The court which rendered the judgment may, on petition presented either in term or in vacation, grant from time to time to the municipal council any delay which it deems necessary to levy the amount of money required.

1029. If the judgment has not been satisfied within two months after the service thereof at the office, the council, or at the expiration of the delay granted by the court or agreed upon by the parties, the person in whose favor such judgment was rendered, or his attorney, may, on producing the return of the service of such judgment at the office of the council, and on a requisition in writing for such purpose, obtain the issue of a writ of execution from the court against the corporation in default, returnable before the same tribunal, so soon as the amount of the judgment and costs has been levied.

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Decision. — The creditor of a municipal corporation cannot seize the property of those indebted to it. Municipal taxes are not seizable. *Day vs Blair.* 3 Rev. de Jur. 540.

1030. Such writ is attested and signed by the clerk or prothonotary, sealed with the seal of the court, and addressed to the sheriff of the district in which such municipality is situated, who is enjoined by the same among other things :

1. To levy from the corporation, with all possible despatch, the amount of the debt with interest and costs of the judgment as well as of the execution ;

2. In default of immediate payment of the corporation :

To apportion the sums to be levied on all the taxable property in the municipality liable for such judgment, in proportion to its value as it appears by the valuation roll, with the same powers and obligations, and under the same penalties as the councils and the secretary-treasurer to whom he is by right substituted for the levying of such money ;

If the judgment has been rendered against a county corporation, to make forthwith an apportionment on all the local corporations of the county, and to transmit immediately a copy to the office of the council of each of such corporations ;

To prepare without delay, and at the same time as the apportionment in the case mentioned in the preceding provision, according to the rules prescribed by article 955, a special collection roll for each local municipality in which money must be levied under the authority of such writ ;

To publish such special roll in the municipality, in the manner required by article 960 ;

To exact and levy the amounts entered on the special collection roll, in the manner and within the delay prescribed by articles 960 and 961 ;

In default of the payment of such amounts by the persons who are bound so to do, to levy the same with costs on their moveable property, in the manner prescribed by articles 962 to 970 inclusive ;

To sell the real estate liable for such amounts in default of their payment, on the first Monday of the following March, in the manner and according to the rules laid down in the foregoing title, after having given the publications and notices required by the provisions of the same title ;

3. To make a return to the court of the amount levied and of his proceedings, as soon as the amount of the debt, interest and costs has been collected, or from time to time as the court may order.

1030*a*. If the judgment has been rendered on debentures or coupons issued in virtue of a by-law, made by a county council in con-

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formity with article 974 of this code, or to any special act to the same effect as such article, the apportionment to be made by the sheriff shall be in accordance with the terms of such by-law, and in the same proportion as the apportionment made by the county council under article 974 ; and in such case mention shall be made both in the judgment and the writ of execution, that the county corporation has been condemned in virtue of such by-law.—R. S. Q., 6215.

1031. The sheriff is bound to execute without delay, either personally, or by his officers, all the injunctions of such writ, or of any other order subsequently issued by the court whose officer he still remains.

1032. The sheriff has free access to the registers, valuation rolls, collection rolls and other documents deposited at the office of the council of every municipality in which he must levy money, and he may demand the services of the municipal officers of such council, under the ordinary penalties.

1033. He must take possession of all the valuation rolls and other documents which are necessary to him in the execution of the judgment and orders of the court.

On the refusal or neglect of the municipal council or its officers to deliver up such documents, he is authorized to take possession thereof.

1034. If it is impossible for the seizing officer to obtain the valuation rolls, which should serve as a basis for the collection of the moneys, or if there are no such valuation rolls, the sheriff must without delay proceed to make a valuation of the taxable property liable for such judgment ; and he is authorized to base the apportionment or the special roll for the collection of the moneys to be levied on such valuation roll in force for such municipality.

The costs incurred in making such valuation are taxed by the court from which the writ issued, form part of the costs of execution, and are recoverable from the local corporation in default.

1035. The sale and adjudication of real estate by the sheriff, in default of payment of the amount specified in the collection roll made by him, have no other effects than those mentioned in the preceding title.

The deed of sale of the land is given by the warden of the county municipality in which such land is then situated, in the manner prescribed in the preceding title, at the expiration of two years, if the redemption of the same has not in the meantime been effected.

1036. The fees, costs and disbursements of the sheriff are taxed

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at the discretion of the judge of the court from which the writ of execution issued.

1037. The sheriff must transmit a copy of his special collection roll, and any other list or document whereof he has taken possession, to the office of the council to which it belongs, after having levied the whole amount set forth in the writ of execution, together with interest and costs.

1038. Arrears due in virtue of the apportionment or of the special collection roll of the sheriff belong to the corporation on behalf of which they ought to be levied, and may be recovered by such corporation, in the same manner as any other municipal tax.

If any surplus remains in the hands of the sheriff, it belongs to the corporation.

1039. If the corporation against which any judgment has been rendered, ordering the payment of any sum of money, holds property in its own name, such property may be seized and taken in execution in the ordinary manner prescribed in the code of civil procedure.

1040. The sheriff may obtain from the court any other calculated to facilitate and ensure the complete execution of the writ which has been addressed to him.

1041. If any land advertised to be sold by the sheriff under these provisions is advertised to be sold on the same day by the secretary-treasurer of the county, the latter cannot sell the land, but must forthwith transmit to the sheriff a statement of his claims and costs, which statement must be added to the amount claimed by the sheriff, and levied by him at the same time as such amount.

TITLE SECOND

RECOVERY OF PENALTIES IMPOSED IN VIRTUE OF THIS CODE

CHAPTER FIRST

GENERAL PROVISIONS

1042. Penalties imposed by municipal by-laws or by the provisions of this code are recoverable either before the magistrate's court or befort the circuit court of the county or district within

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the limits of which they have been incurred, or before any justice of the peace residing in the municipality, if there is one, if not, before any justice of the peace resident in a neighboring municipality in the district.—61 Vc., ch. 49, s. 8.

Decisions. — 1. In *Daoust* and *Proulx*, Magistrate Court, District of St. Scholastique, 10 March 1875. De Montigny, magistrate, 7. R. L. p. 317, it was held that it is only by express permission of the law that an action may include a demand in damages, and fines; that the provisions of sections 8 and 39 of ch. 26 of R. S. L. C., "Act respecting abuses prejudicial to Agriculture", which grant such permission have not been abrogated by the municipal code, and damages caused by animals, unless the animals have been impounded, and in all other cases, damages and fines can be recovered under the provisions of said statute by one action.

2. In a suit instituted under arts. 398 and 1042 M. C. for the value of works done on a by-road, a justice of the peace residing in a municipality other than that of the defendant's domicile has no jurisdiction, unless it appears on the record, that no justice of the peace resides in the municipality of the defendant. *Lambert* and *Lapalisse*. 6. R. L. 65.

1043. All penalties incurred by the same person may be included in the same suit.

1044. Whenever, under the provisions of this code or of municipal by-laws, a penalty is imposed for each day during which the same are contravened, such penalty can be recovered for the first day only, unless special verbal or written notice has been given to the person contravening the same. If such notice is given, the penalty may also be recovered for each day thereafter on which such contravention continued.

1045. Every suit for the purpose of recovering such penalties must be begun within six months from the date when they were incurred, after which period the same cannot be brought.

1046. Such prosecution may be brought by any person of age in his own name, or by the head of the council in the name of the municipal corporation.

Decisions. — 1. The previous authorization of the municipality is not necessary before a party can take such an action. *Lami* vs *Rabouin*. 1 R. L., 687.

2. Held that a *qui tam* action ought to be taken in the prosecutor's name as well as in the name of the municipality to which will accrue part of the penalty. *Graham* vs *Morrissette*, 5 Q. L. R. 346. *Robert* vs *Doutre*, 5 R. L. 400. *Houle* vs *Martin*, 6 R. L. 641. *Vinet* vs *Toupin*, 30 L. C. J., 257. In *Bouchard* vs *Gilbert*, 12 L. N. 369, the municipality was not made a party but judgment was granted notwithstanding.

3. All the names of the joint plaintiffs and their qualities must be indicated in the writ. *Ferland* vs *Morrissette*, 9 Q. L. R., 70.

4. Damages and a penalty cannot be asked by one and the same action. *Labelle* vs *Gratton*, 7 R. L. 325.

5. This action is a popular rather than a *qui tam* action. It is not

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essential to allege that the affidavit has been lodged with the fiat. *Paré* vs *Corporation of St. Clément.* 5 R. L., 428.

6. Actions taken in virtue of 793 must be taken in the name of the crown as well as of the prosecutor and must be preceded by the affidavit required by the statute 27-28 Vic., ch. 43. *Laliberté* vs *Corporation St. Louis de Lotbinière,* 20 December, 1894. Andrews, Routhier and Pelletier, JJ.

7. The procedure indicated in art. 1046 does not exclude the right to proceed by action *qui tam. Beaulac* vs *Atkinson.* 1 Rev. Jur., 134.

8. In penal actions against municipal corporations for neglecting to keep roads in order, the plaintiff ought to furnish security for costs in accordance with 180 C. C. P. if required; and to produce the affidavit mentioned in art. 5716 R. S. Q. *Monpas* vs *Corporation of St. Pierre les Becquets.* 4 Rev. Jur., 141.

9. Where a statute imposes a penalty without providing how it may be recovered it ought to be recovered in the name of the crown alone or in the name of a private person as well in accordance with art. 16 C. C. and 31 Vic., ch. 7, s. 7. (Arts 30, 31, R. S. Q.) *Drouin* vs *Gosselin.* 19 R. L., 340. Q. B.

10. The right of action given by this article does not exclude the right to the ordinary popular action *qui tam.*

When an action is taken under the provisions of art. 1046, the conclusions should ask that defendant be condemned to pay either to the corporation or to the crown according to circumstances, as provided by art. 1049. *Nadeau* vs *Corporation of St. Patrick of Rawdon.* 5 Rev. de Jur., 357.

11. The mode of suit indicated by this article does not exclude the ordinary action *qui tam. Asselin* vs *Corporation of Ste. Beatrix.* 6 Rev. de Jur., 349.

12. It is for the municipal council and not for the Superior Court to make enquiry as to the character of a person who asks for confirmation of his certificate. (License Law, Sec. 21, 22 and 23.) *Moffett* vs *Corporation of Plessisville.* 7 Rev. de Jur., 236.

12. A plaintiff suing for the recovery of a fine due by a municipal corporation should ask that the amount be paid to the collector of provincial revenue. 6 Rev. de Jur., 349. *Asselin* vs *La Corporation de la paroisse de Ste. Beatrix.*

1047. Any suit brought in virtue of the provisions of this title may be decided on the oath of one credible witness.

1048. Fines recovered in virtue of municipal by-laws or the provision of this code belong, unless otherwise ordained, to the municipal corporation, except when the fine is due by the corporation, in which case it belongs entirely to the crown, and shall be paid to the collector of provincial revenue of the district in which the said municipality is situated.

1049. In default of payment of the fine inflicted by the court and the costs, within fifteen days from the rendering of the judgment, the property of the person so condemned is seized and sold up to the amount of the penalty and costs; and in default of property sufficient, the person condemned must be imprisoned for any time not exceeding thirty days, which imprisonment ends, however, on payment of the sum due.

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Such imprisonment discharges the person who undergoes it from the obligation of satisfying the judgment against him.—R. S. Q. 6216.

Decision. — Held : By the terms or art. 1049 as amended by 57 Vic., ch. 50, sec. 10, fines belong to the municipal corporation except when due by it, and to the crown when they are due by the corporation. *Nadeau vs Corporation Parish of St. Patrick of Rawdon.* 5 Rev. de Jur., 357. (See also art. 1046.)

1050. The plaintiff or the complainant whose demand or complaint has been dismissed with costs is bound to pay the costs under penalty of seizure or of imprisonment, in the manner and within the delay prescribed in the preceding article.—R. S. Q. 6217.

1051. Articles 1045, 1046, 1048, 1049 and 1050 do not apply to suits brought to recover moneys which, according to the provisions of this code, may be recovered in the same manner as the penalties imposed by this code.

CHAPTER SECOND

OF PROSECUTIONS BEFORE JUSTICES OF THE PEACE

1052. Prosecutions brought before justices of the peace, in virtue of article 1042, are heard and decided by them according to the usual rules of procedure laid down respecting summary orders and convictions, except in so far as the same are inconsistent with the provisions of this title.

Decision. — In *Simard* and *Corporation of Montmorency County.* C. Q. B., Quebec, 7 June 1879. Dorion Chief Justice, Monk, J., Ramsay, J., Tessier, J., and Cross J. 4 Q. L. R. 208 and 8 R. L. 546. It has been held, confirming judgment of S. C. Quebec 1877, Stuart, J., that it was not necessary to affix stamps upon the proceedings before a justice of the peace in civil matters, as in an action for the recovery of an amount due under a *procès-verbal* or an act of apportionment ; and if the Defendant summoned before a justice of the peace do not deny the jurisdiction before judgment, he cannot stay execution by a writ of prohibition, unless the default of jurisdiction appears on the face of the proceedings.

1053. Such suits need not be begun by the affidavit or deposition on oath of the plaintiff or complainant, provided always that the purport of the complaint or demand is sufficiently set forth in the writ or in a declaration annexed thereto.

1054. The record of every suit must be remitted by the person in whose custody the same is, to the justice of the peace, upon his order, in cases where there is an appeal from the judgment to the circuit court.

1055. There must be an interval of at least two juridical days

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between the day of the service of the summons and that of the return.

1056. On the day of the return of the summons or of the warrant, the justice of the peace who has signed the summons or the warrant may hear and decide the case alone.

He may nevertheless require the assistance of any other justice of the peace having jurisdiction within the district.

1057. The returns of service made by a bailif are given under oath of office.

1058. The justice of the peace or the clerk must take notes of the important parts of the evidence.

These notes, signed by the sitting justice of the peace, are part of the record.

1059. The judgment of the court may be executed at the expiration of the fifteen days from the date thereof.

Decision. — A conviction by a justice of the peace in virtue of a municipal by-law which orders imprisonment in default of immediate payment of the penalty and costs is illegal, as a delay of 15 days should be allowed. *Morin* vs *Corporation of Lachine.* 5 O. R ; C. S., 115.

1060. Any constable or police officer may, and must if he is so required by the head or by any other member of the council, or by the council itself, apprehend or arrest at sight all persons found contravening the provisions of any municipal by-law punishable by fine, if it is so ordered by the by-law, and bring them before any justice of the peace to be dealt with according to law.

Decision. — Probable cause constitutes a good plea to an action in damages for false arrest. *Corporation of Quebec* vs *Piché.* C. Q. B ; 8 L. N., 18.

TITLE THIRD

APPEALS TO THE CIRCUIT COURT

1061. An appeal lies to the circuit court of the county or of the district :

1. From every judgment rendered by justices of the peace, in suits brought under the provisions of this code or of municipal by-laws ;

2. From every decision given by a county council respecting any *procès-verbal* made and homologated or any act of apportionment amended under the authority of such council, sitting otherwise than in appeal ;

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3. From every refusal to homologate a *procès-verbal* by a county council sitting otherwise than in appeal ; and from the dismissal, by any county council or by its superintendent, of any petition requiring the opening, construction, enlarging, altering or maintenance either of a road, bridge or water-course which is or should be under its jurisdiction ;

4. From any decision given by a local municipal council in virtue of articles 734, 738, 746 and 746*a* respecting a valuation roll, whether the decision be rendered by the council, of its own motion, or on complaint against the roll produced before it ;

5. Whenever a local municipal council has neglected or refused to take cognizance of any written complaint made in virtue of article 735, or to obtain the revision and the amendment of the valuation roll in conformity with articles 746 and 746*a*, within thirty days after the expiration of the delay in which it might have taken cognizance thereof.

The costs of appeal are taxed at the discretion of the judge, for or against such of the parties, municipal corporation or councillors personally, as he shall deem advisable, are recoverable under a writ of execution issued in the usual manner.—R. S. Q. 6218.

Decisions. — 1. No appeal lies to the Circuit Court from a decision of the county council sitting in appeal upon a decision of the local council respecting a *procès-verbal*.

This lack of jurisdiction will be taken cognizance of, even if not invoked.

The council has the right to appear and be treated as a party to an action. *Viau* vs *Corporation of Longue Pointe et al.* 8 L. N., 110.

2. No appeal lies to Circuit Court from a decision of the county council respecting a valuation roll. *Meunier* vs *Corporation County of Levis.* 3 Q. L. R., 345.

3. The decision of a county council does not deprive a party of his recourse by direct action when a *procès-verbal* orders something illegal. *Corporation of Ste. Anne de Bellevue* vs *Reburn.* 8 L. N., 67.

4. The dismissal of an appeal to the Circuit Court does not prevent an action to have by-law declared illegal upon grounds other than its merits. *Corporation Parish St. André Avellin* vs *Corporation Township of Ripon.* 4 Q. O. R ; Q. B. 167.

5. Art. 1061 is amended by R. S. Q. art. 2340a (52 Vic., ch. 29, s. 2) and the Circuit Court of the district of Quebec has concurrent jurisdiction with that of the district of Beauce and of Dorchester to hear an appeal from the county council of Dorchester. *Bouchard* vs *Corporation of County of Dorchester.* 1 Rev. Jur., 298.

6. The question of *chose jugée* can only be raised with regard to a *procès-verbal* when a second appeal from homologation is attempted or when it is sought to homologate a *procès-verbal* already rejected. *Corporation of Ste. Philomène* vs *Corporation of St. Isidore.* 29 L. C. J., 240.

7. An appeal to the Circuit Court does not lie from a decision of a county council sitting in appeal homologating a *procès-verbal* adopted by a local council.

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Upon an appeal the petitioner respondent ought to be served with a copy of the writ and the county council is also entitled to be a party. *Viau* vs *Corporation Longue-Pointe.* 8 L. N., 110. C. C.

8. The Superior Court, in virtue of art. 2329 of the revised statutes of the province may take cognizance of the proceedings of municipal councils whatever they may be and annul them. It may exercise the same powers in the case of a county council sitting in appeal notwithstanding the provisions of article 1061. *Piché* vs *Corporation of Portneuf.* 17 Q. O. R., 589. (*Review.*)

1062. The right of appeal also exists from every decision given by a board of delegates under any form whatever, to the circuit court of the county sitting in one of the counties the corporation whereof the delegates represent, or to the circuit court of the district. If the municipalities represented by the delegates are situated in more than one district, an appeal may be brought to the circuit court of any of such districts.

1063. The word "judgment", employed in the following provisions of this title includes also the decision rendered by a municipal council or by a board of delegates, the dismissal by any superintendent of a county council of a petition, or the neglect or refusal of a local municipal council in the cases mentioned in article 1061.—R. S. Q. 6219.

1064. The party who desires to appeal therefrom must within thirty juridical days after the judgment is rendered :

1. Give an ordinary notice of such intention to the justice of the peace, or to one of the justices of the peace who rendered such judgment, or to the clerk, or at the office of the municipal council, if any municipal council is in question, or to the secretary of the board of delegates, if the appeal is from a decision of such board ;

2. Furnish before the clerk of the court where the appeal is brought good and sufficient security to effectively prosecute the appeal, to satisfy the judgment and to pay the damages awarded, and cost incurred, as well of the inferior court, the council, or the board of delegates, as in appeal, in the event of the judgment being confirmed.—R. S. Q. 6220.

Decisions. — 1. If appellant does not furnish security as required under this article, and omits to comply with all its requirements the adverse party should take objection *in limine litis.*

A motion presented at the final hearing, asking the dismissal of such appeal for informalities, will be rejected. The formality of the notice of security and of the service of the writ under article 1067, are all formalities enacted in the interest of respondent only ; and the latter has the right to exempt appellant therefrom, expressly or tacitly, by his silence or abstaining from taking advantage of this omission in due time by motion or preliminary exception, and before proceeding on the merits. C. C. Ste. Martine, 1 May 1885. Belanger, J. *Corporation of Ste. Philomène, appellant,* and *Corporation of St. Isidore, respondent.*

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2. The notice under article 1064 M. C. is not required before the issue of the writ of appeal, but can be given with the notice required under article 1067 M. C. *Bouchard* and *Corporation of Dorchester County.* Andrews J. 1 Rev. de Jur., 298.

3. Articles 1064 and 1070, municipal code, merely fix the delay within which an appellant must proceed, on pain of nullity. The delay therein mentioned cannot be taken advantage of by municipal corporations whose decisions are appealed from.

The writ of appeal must be returned into Court on the first juridical day of the term following the expiration of the 40 days after the judgment was rendered.

By article 1667, as amended, an appellant is no longer required, as formerly, to serve the writ of appeal upon petitioners, it being sufficient to serve the writ of appeal at the office of the council, and it is then the duty of the secretary within eight days, to give public notice of such appeal and the day of its return to every parish directly affected by the decision in question.

By the expression "party" in article 1064 is meant every party interested or affected by the decision of the municipal council. *Manseau, appellants,* vs *Papin et al., respondents.* and *Corporation of the County of L'Assomption, mis en cause,* 6 Rev. de Jur., 421.

1065. Sureties must, to the satisfaction of the clerk, justify their sufficiency to the amount of at least one hundred dollars, over and above all debts, and under oath, if the clerk deems proper. One surety is sufficient.

1066. The appeal is brought before the court by means of a writ of appeal signed by the clerk, setting forth that the appellant complains of having been aggrieved by the judgment appealed from, and commanding the justice of the peace or one of the justices of the peace by whom such judgment was rendered, or their clerk, or the secretary-treasurer of the council, if the decision of any municipal council is in question, or the secretary of the board of delegates, if the appeal is from a decision of such board, to transmit the record in the cause.—R. S. Q. 6221.

1067. A copy of the writ of appeal certified by the clerk or by the appellant's advocate, together with a notice of the day when it shall be presented to the court, must be served within the thirty days next after the rendering of the judgment, on the respondent or his advocate, and on the justice of the peace or on one of the justices of the peace who rendered the judgment, or on their clerk.

If the decision of a municipal council or of a board of delegates is in question, it will be sufficient if the copy of the writ of appeal is served at the office of the council, or upon the secretary of the board of delegates, as the case may be, and it shall then be the duty of the secretary at whose office the service was made, within eight days to give public notice of such appeal and the day of the return of the writ, in each parish directly affected by such decision.—R. S. Q. 6221; 57 Vic., ch. 51, s. 11.

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Decisions. — 1. It is not necessary to serve upon the parties who have demanded the *procès-verbal*, the writ of apeal from a decision of the board of delegates homologating the *procès-verbal*.

The writ of appeal must be returned to the Circuit Court on the first day of the term following the expiration of forty days after the decision; the publication of the notices of meetings by the special superintendent under article 794 must be established by a certificate under oath written upon the original notice or annexed to it, and verbal proof is not sufficient. The certificate of the secretary-treasurer and of a bailiff under their oath of office is not sufficient, and a *procès-verbal* stating that the notices have been served by those officers will be set aside, even if it is proved during the trial that the publications have been duly given. *Cantwell* vs *Corporation of Chateauguay County*. 23 L. C. J., 263.

2. When a petition by rate-payers of a municipality asks the council to appoint a superintendent in order that he may make a report upon the opening of a road or the keeping of the same in good order, those who upon the appeal from the decision of the board of delegates, are called "respondents", by the municipal code, must be petitioners in the petition instead of the corporation, which upon the authority of its council has appointed the superintendent. Upon such an appeal the service of the writ required by the code must be made upon every petitioner, who should all be *mis en cause* as respondents. C. C. *Corporation of St. Alexander parish, appellant*, and *Mailloux*. 7 R. L., 417.

3. When the decision rendered by a county council referring to *procès-verbal* drawn and homologated under the authority of the council, is appealed from to the Circuit Court, such appeal ought to be against the interested parties requiring such *procès-verbal*, unless the council should have acted *proprio motu*.

The interested parties who have signed the petition requiring the council to act must be *mis en cause* upon the appeal, not the corporation of the county which has acted merely through its council as a judicial tribunal. *Corporation of the parish of Pointe-aux-Trembles* and *Corporation of Hochelaga County*. C. C. 7 L. N., 158; *Viau* and *Corporation of the parish of Longue-Pointe*. C. C. 13 R. L., 279: 8 L. N., 110.

4. The formality of the service of the writ of appeal is required merely for the benefit of the respondent who may waive this formality formally or tacitly in favor of appellant, by taking no advantage of said informality and by proceeding at once on the merits. *Corporation of Ste. Philomène* and *Corporation of St. Isidore*. 20 L. C. J., 240.

5. The service of a writ of appeal from a decision of the municipal council must be made within thirty days after said decision. *Corporation of village of Varennes* and *Corporation of County of Verchères*. 33 L. C. J., 115.

6. When the decision of the board of delegates homologating a *procès-verbal*, is appealed from, every petitioners on the *procès-verbal* should be *mis en cause*; and a judgment from the Circuit Court declaring null and void such a *procès-verbal* will be set aside, and the *procès-verbal* maintained against appellants upon fyling a tiers opposition by the petitioners who had asked for the *procès-verbal*, even though several of them had already acquiesced in the judgment. *Corporation of St. Fortunat of Wolfeston* vs *Rainville*. C. C. 10 L. N., 123.

7. The county corporation and the interested parties who have obtained the decision of the council should be *mis en cause* as respondents when an appeal is taken from the decision given by a county council; and if the writ of appeal has not been served upon them, the court may

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order that such parties should be *mis en cause*. *Sawyer* vs *Corporation of Missisquoi County*. C. C. 1 O. R.; C. S., 207.

The writ should be addressed to the county corporation, not to the secretary-treasury. *Ibid.*

8. Service of a copy of the writ of appeal upon interested parties as respondent is no longer required since the enactment of the statute, 57 Vic., ch. 51, s. 11 ; such service has been dispensed with since the public notice required under this statute. *Bouchard* vs *Corporation of Dorchester County*. Andrews J., Rev. de Jur., 298.

9. It is not necessary to mention the names of any interested parties as respondent in a writ of appeal from the decision of the board of delegates; it is sufficient to serve the writ upon the secretary of the delegates, who should give public notice under art. 1067 of M. C. *Tremblay* vs *Board of delegates of Chambly County*. 9 O. R.; S. C. 290. Champagne, J.

1068. Between the day of such service and that fixed for presenting the petition in appeal to the court, the justices of the peace, or the secretary-treasurer, or secretary, as the case may be, must transmit the record in the case to the clerk of the circuit court, with a certificate testifying that the documents transmitted are all the papers, documents and evidence relating to the case.

1069. The execution of the judgment from which an appeal has been instituted is suspended until the decision of the circuit court, if a copy of the writ of appeal has been served within the prescribed delay upon the justices of the peace, or upon their clerk, or at the office of the council if the appeal is from a decision of a county council, or upon the secretary of the board of delegates, if one of their decisions is in question ; in default thereof the judgment may be carried into effect.

1070. The writ of appeal must be returned to the circuit court on or before the first juridical day of the term following the expiration of the forty days after the judgment was rendered, in default thereof the appeal lapses.

The appellant must produce on the day of the return of the writ of appeal, together with a return of the bailiff establishing the necessary services, a petition settling out summarily the title of the cause, the date of the judgment, the notice given, the security furnished, the grounds of appeal, with conclusions praying for the setting aside of the judgment and for the rendering of that which ought to be rendered.—R. S. Q. 6223.

Decision. — The delays mentioned in arts. 1064 and 1070 are intended to establish a sort of prescription of the rights of one who desires to appeal from a decision of a council. It is not necessary to await the full expiration of the delays mentioned.

The petition in appeal may be filed on the day of the return of the writ of appeal. *Manseau* vs *Papin et al.*, and *Corporation of L'Assomption*. 6 Rev. de Jur., 421.

1071. The appeal is heard and determined in a summary manner.

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In no case can new witnesses be heard or fresh evidence adduced, unless the council or court of first instance has refused to take cognizance of the evidence offered, or except when the appeal is from a decision of a county council or a board of delegates, or of a local council rendered under articles 734, 738, 746 or 746*a*.—53 Vic., ch. 51, s. 12.

Decisions. — 1. The appellant under this article, as amended by 39 Vic., ch. 29, s. 23, cannot examine other witnesses in support of such appeal. C. C. *Giroux* and *Corporation of St. Jean Chrysostome*. 5 Q. L. R., 37.

2. A municipal corporation has not the right to confess judgment upon a petition appealing from a decision of the council, when certain names have been erased from the electoral list. If the council takes upon itself to revise and correct the list when there is no complaint, no apeal lies, but proceedings to set aside may be instituted.

A petition to appeal ought to be presented within the fifteen days after the revision of the lists, and after that delay, the judge in chambers is incompetent to act, *ratione materiæ*. *Leclerc* and *Corporation of St. Jean Port Joli*, 14 R. L., 313.

3. The respondent who has preleminary objections to fyle, such as an exception *à la forme* asking the dismissal of the appeal, must present it within four days after the return of the writ. After that delay, he is prevented from presenting it, even if the Court has granted delay to fyle an answer to the petition in appeal. *Sawyer* and *Corporation of Missisquoi County*. C. C. 1 O. R.; S. C., 217.

4. Upon an appeal to the Circuit Court from the decision of the local council, under art. 1071. M. C., when the council has refused to hear witnesses at the revision of the assessment roll under art. 737. M. C., the Court has the right to hear witnesses upon facts which are submitted during the appeal. *King* and *Corporation of Kingsville*. 1 Rev. Jur., 153. C. C. Plamondon, J.

1072. The judgment can be set aside only when a substantial injustice has been committed, and never by reason of any trifling variance or informality.

If objections are raised which do not affect the merits of the cause, the court may amend the procedure, which is thereupon executed as though it had been regular in the first instance.

1073. If the judgment is confirmed, the record in the cause, together with a copy of the judgment deciding the appeal and a certificate of the costs allowed on the appeal, must be transmitted without delay to the court below, under the authority of which all the costs incurred, including those in appeal, are levied.

If the decision from which the appeal has been instituted has been rendered by a county council, or by a board of delegates, the costs are levied under the authority of the court which pronounced on such appeal.

Decision. — The county council cannot be condemned to pay the costs of the appeal. *Viau* vs *Corporation of parish of Longue-Pointe*. 8 L. N., 110.

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1074. If the judgment is modified in whole or in part, the record and all the procedure remain in the archives of the circuit court, save in the case of article 1079, and the judgment pronouncing on the appeal is carried into effect under the authority of such court.

1075. Every appellant who neglects to make the service required by article 1067, or who having made the same, neglects effectually to prosecute the appeal, is deemed to have abandoned such appeal, and the court, on application by the respondent, must declare all the rights and claims founded on the said appeal forfeited, with costs in favor of the respondent, and orders the transmission of the record to the court below.

1076. The sureties are bound to satisfy the judgment under penalty of seizure and execution, and in the same manner as the principal party, fifteen days after service of the judgment upon them.

1077. No appeal lies under the provisions of this title from any judgment rendered by any judge of the superior court or any district magistrate, respecting municipal matters.

Decisions. — 1. No appeal lies under the provisions of this title from any judgments rendered by the Circuit Court respecting municipal matters; no evocation lies from the Circuit to the Superior Court under article 1058 of the Code of Civil procedure, except in cases where appeal lies in virtue of article 1054 of said Code of procedure; and if the present case has been rightly instituted before the Circuit Court, no appeal lies from the judgment of the Circuit Court. S. C. *Corporation of Drummond County* vs *Corporation of parish of St. Guillaume.* 4 R. L., 706.

2. Notwithstanding the provisions of this article, appeal lies from judgments rendered by Circuit Court, in actions for recovery of municipal taxes, when the amount claimed is hundred dollars or over hundred dollars. *Corporation of Grantham* vs *Ward.* S. C. R; 11 Q. L. R., 222. *Corporation of Drummond. County* vs *Corporation of parish of St. Guillaume.* C. Q. B.; 7 R. L., 721; *The Montreal Cotton Company* vs *Corporation of Salaberry.* C. Q. B.; 2 L. N., 338; *Corporation of Chambly* vs *Lamoureux.* 19 R. L., 312.

3. No appeal lies from a judgment partly setting aside a decision of a county council concerning the opening of a road. *Rioux* vs *Corporation of Rimouski.* S. C. R; 11 Q. L. R., 231.

4. In general, there is a right of appeal in municipal as in all other matters from all judgments of the Superior Court. (43 C. P.)

The exceptions to this rule are stated in (1) .Art. 1006 C. P. (2). Art. 1306 C. P., (3) Arts 4178 and 4616 R. S. Q.

There is no appeal from judgments rendered by the Circuit Court of a *chef-lieu* whether rendered in municipal matters or not (49-50 Vic., ch. 18.) *Lachance* vs *Corporation Ste-Anne de Beaupré.* 10 Q. O. R., 223., Q. B.

1078. No judgment, decision or conviction susceptible of appeal uuder this title, and no judgment or conviction rendered by a dis-

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trict magistrate, can be removed by *certiorari* to the superior or circuit court.

Decision. — Although the writ of *certiorari* has been done away with by the agricultural act, nevertheless it lies when the conviction contains no reason justifying itself. S. C., Montreal, 29th April 1871. Torrance, J., *ex-parte Lalonde, petitioner on certiorari.* 1 C. R ; 475.

1079. All the documents produced by the county council or by the board of delegates must be transmitted to them after the judgment in appeal is rendered, together with a copy of such judgment.

1080. In the municipality of the city of Sherbrooke ; in the local municipalities of the counties of Compton, less the municipalities of North Winslow and South Whitton, Stanstead, Brome, Missisquoi ; in that of the county of Richmond ; and in those of the county of Shefford, excluding the municipalities of the townships of Milton and Roxton ; in those of the county of Huntingdon, excluding the municipality of the parish of St. Anicet ; and in the municipality of the township of Leeds, except the municipality of East Leeds if its municipal council passes a by-law to that effect, in the county of Megantic ; as well as in the municipalities of l'Avenir, South Durham, the township of Kingsey and the township of Durham, in the county of Drummond, all works on municipal roads and bridges are executed at the expense of the corporation in the same manner as if a by-law was passed to that end under article 535.

(The councils of these municipalities may, by by-law or resolution, ordain that the tax imposed for such work be commutable, in whole or in part, into statute labour according to a scale or tariff at a fixed rate. If no portion of the tax be so commuted, then the council may, each year, set apart such proportion of the tax, as it deems advisable, for permanent road construction or repair in the municipality ; and if only a part of the tax be commuted, then the remaining part, or such portion thereof as the council deems advisable, may in like manner be set apart. The portion of tax so set apart shall not be used for any other purpose than for permanent road construction or repair and if it be not all employed during the year for which it is set apart, it shall remain as a separate fund available for such use during the succeeding year or years. Such permanent work shall be carried on under the supervision of the road inspector, and, if there be no such officer in the municipality, then under the supervision of a person who shall be specially named for that purpose by the council.—63 Vic., ch. 45.)

The councils of these municipalities may make such provisions as they deem the most equitable for the making and maintenance of the fences along municipal roads, or for ordering that such fences and all those making an angle with the fences of such municipal

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roads, for a distance of twenty-five feet, be, during part of the year, kept down within twelve inches of the ground.

Such by-laws or orders may be put into force, as the councils may deem most equitable, either by compelling the proprietors of the adjacent lands to make such fences or to take them down as aforesaid, or in any other manner.

These provisions do not apply to quick-set hedges, to picket-fences or those at a greater distance than twenty-five feet from the road, nor to those which cannot be taken down or replaced without great expense.

The councils of these municipalities may, by *procès-verbal*, define the time during which any by-road shall be built, without it being obligatory on the corporation to build any particular part of such road in any special time.—R. S. Q. 6224 ; 52 Vic., ch. 54, s. 23 ; 57 Vic., ch. 51, s. 13 ; 61 Vic. ch. 49, s. 9.

The councils of these municipalities may maintain their winter roads by adopting any of the following methods:

1. By the day ;
2. By contract ;
3. By selling the right to perform such work to the lowest bidder, and, for any of the said purposes, they may divide the said municipalities into one or more road divisions and may cause to be levied a special tax on each division to pay the cost of the work performed thereon, or they may impose on the whole municipality a general tax for the payment of the whole of such work.

The provisions of article 1080 of the said code shall apply to the local municipality of the county of Sherbrooke.

This section shall not affect pending cases. **2 Edw. VII, ch. 47.**

1081. The councils of the following local municipalities possess the functions and powers conferred upon county councils, in addition to those conferred upon local councils, and they do not form part of the municipalities of the counties within which they are situated :

The municipality of l'Isle aux Coudres, in the county of Charlevoix ;

The municipality of Crane Island, in the county of Montmagny ;

The municipality of the parish of Saint-Pierre de la Pointe aux Esquimaux, and the municipalities of Tadousac, and Escoumains, in the county of Saguenay.

The county of Charlevoix forms two separate county municipalities, as follows :

The parish of Saint Siméon, Saint Fidèle, Saint Etienne de la Malbaie, Saint Irénée, and Saint Agnès, the townships of Callières, Chauveau and De Sales, and the unorganized territory to the north of these parishes and townships, form a county municipality under

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the name of "Municipality of the first division of the county of Charlevoix" ; and

The parishes of Saint François-Xavier de la Petite Rivière, Baie Saint Paul, Saint Urbain, Eboulements, and Saint Hilarion, and the unorganized territory to the north of these parishes form another county municipality under the name of the "Municipality of the second division of the county of Charlevoix" ; and

The county of Chicoutimi forms two separate county municipalities as follows :

That part of the county to the north, east and south east of the townships of Labarre and Plessis forms a county municipality under the name of the "Municipality of the county of Chicoutimi number one" and

That part of the county to the west and south-west of the townships of Kenogami and Lartigues forms another county municipality under the name of the "Municipality of the county of Chicoutimi, number two" ;

The township of Compton does not form part of the municipality of the county of Compton.

The county of Gaspé forms three separate county municipalities, as follows :

That part of the county to the east of the municipality of Saint Maxime du Mont-Louis, less the Magdalen Islands, forms a county municipality under the name of "Municipality of the county of Gaspé number one" ;

The Magdalen Islands form another county municipality under the name of "Municipality of the county of Gaspé, No. two"; and

The municipalities of Saint Maxime du Mont-Louis, Sainte Anne des Monts and Saint Norbert du Cap Chat form the third county municipality under the name of "Municipality of the county of Gaspé number three".

The county of Montmorency forms two distinct county municipalities as follows :

That part of the county which is situate on the north shore of the river Saint Lawrence forms a county municipality under the name of the "Municipality of the county of Montmorency number one" ; and

The Island of Orléans forms another county municipality under the name of the "Municipality of the county of Montmorency number two" ;

The municipality of the county of Quebec comprises the county of Quebec, that part of the banlieut of Quebec which is included in the centre and west divisions of the city of Quebec, the municipality of the parish of Saint Sauveur de Québec, the parishes of Notre-Dame des Anges and Sacré-Cœur de Jésus and the municipality of Saint Roch north.

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The county of Rimouski forms two separate county municipalities as follows :

That part of the county to the west of the township of McNider forms a county municipality under the name of "Municipality of the first division in the county of Rimouski", and

That part of the county to the east of the seigniory of Metis forms another county municipality under the name of "Municipality of the second division of the county of Rimouski".

The municipality of the county of Sherbrooke comprises the township of Compton and the electoral division of the city of Sherbrooke, less the municipality of the city of Sherbrooke.

The municipality of the county of Saint Maurice comprises the county of Saint Maurice and the electoral division of the city of Three Rivers, less the municipality of the city of Three Rivers.

1082. The council of the municipality of the parish of Saint Romuald of Etchemin possesses all the powers conferred on the council of a village municipality, in addition to those of a council of a parish municipality.

1083. Nothing contained in this code is deemed to repeal chapter sixty-two, 27-28 Victoria, conferring certain powers of a county council on the municipal council of the parish of Saint Colomb of Sillery, in the county of Quebec.

1084. The municipality of the parish of Saint Germain, in the county of Drummond, shall hereafter be known by the name of "The municipality of the parish of Saint Germain de Grantham".

1084*a*. The municipality of the parish of Saint Roch of Quebec South shall be known as the municipality of the parish of Saint Sauveur de Québec.—R. S. Q. 6227.

Note — This municipality exists no longer. It has been annexed to the City of Quebec under the act 51-52, Vic., ch. 78.

1085. Is *repealed* by Q. R. S. 6227.

1086. Chapter twenty-four of the Consolidated Statutes for Lower Canada, and all amendments thereof ;

Every municipal act, whether special or general, and its amendments, respecting corporations and municipalities, whether of a county, of a parish, of a separated township, of united townships, of a part of a parish or township, of a village, or of a town, save and except the cities and towns exempted under article 1 ;

Chapter twenty-five of the Consolidated Statutes for Lower Canada, chapter eighty-four of the Consolidated Statutes of Canada, sections seventy-five, seventy-six and seventy-seven of chapter

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sixty-six of the Consolidated Statutes of Canada, chapter eighteen of the statutes of the heretofore province of Canada, 27-28 Victoria, and chapter twenty-six of the Consolidated Statutes of Lower Canada, entitled : "An act respecting abuses prejudicial to agriculture" and its amendments, in so far as they relate to corporations governed by this code ;

And all other laws of the province in force at the time of the coming into force of this code, are repealed in all case :

In which there is a provision therein having expressly or impliedly that effect ; — in which such laws are contrary to or inconsistent with any provisions herein contained ; — and in which express provision is herein made upon the particular matter to which such laws relate.

Except always that as regards transactions, matters and things anterior to the coming into force of this code, and to which its provisions could not apply without having a retroactive effect, the provisions of law, which without this code, would apply to such transactions, matters and things, remain in force and apply to them, and this code applies to them only in so far as it coincides with such provisions.

1087. This code shall come into force on a day to be fixed by proclamation of the lieutenant-governor in council ; and it shall, from such period, have force and effect, any law to the contrary notwithstanding, derogating thereby from section ten of chapter seven of the statutes of Quebec, passed in the thirty-first year of Her Majesty's reign, and shall be known and cited under the name of "The Municipal Code of the Province of Quebec".

Decisions. — 1. County Councils, as well as local councils have the right to pass by-laws prohibiting the sale of intoxicating liquors, and article 1086 M. C. has not abrogated the first sections of temperance act of 1864, 27. 28 Vic., ch. 18. C. C. *Hart* vs *Corporation of County of Missisquoi.* 3 Q. L. R., 170.

2. The provisions of the temperance act of 1864 have not been entirely abrogated by the M. C. *Sauvé* vs *Corporation of Argenteuil* County. C. C. 2 L. C. J., 119; *Covey* vs *Corporation of County of Brome.* C. C. 9 R. L., 289.

3. The 26 ch. of R. S. L. C. has not been abolished by the M. C. except when it refers to corporations existing after this code.

The same action may lie to claim damages done by animals, and fines imposed by this statute. The special provisions of the M. C. doing away with ch. 26 R. S. L. C. only when animals have been impounded. *Daoust* vs *Proulx.* C. Mag. 7 R. L., 317.

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APPENDIX

1.—THE QUEBEC ELECTION ACT, 1895.
2.—QUEBEC LICENSE LAW.
3—JURORS AND JURIES.

1.—The Quebec Election Act 1895

59 Victoria, chapter 9, as amended by 60 Victoria, chapter 21; 61 Victoria, chapter 13; 62 Victoria, chapters 15 and 16, and 63 Victoria, chapter 11.

CHAP. 9.

An Act respecting the election of members of the Legislative Assembly of Quebec.

[*Assented to 21st December, 1895.*]

HER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

SECTION I.

Preliminary provisions.

1. This act may be referred to and cited as "The Quebec Election Act, 1895."

This act applies to every election of a member of the Legislative Assembly, whether the same be held at the time of a general election or to fill a vacancy.

2. In interpreting this act, unless it be otherwise provided, or unless there be in the context something which indicates a different sense or requires another interpretation:

1. The term "voting subdivision" means, for voting purposes, any municipality or part of a municipality, whereof the number of electors entered on the list then in force does not exceed two hundred;

2. The term "personal expenses," employed in relation to the expenditure of a candidate, respecting any election in which he is candidate, com-

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prises only the reasonable travelling expenses of such candidate, and his reasonable expenses at hotels and other places to which he may repair for the purpose of and in regard to such election ; the expenses for stationary, postages and telegrams; those for a clerk, writer or copyist employed by him, finally those petty necessary disbursements made in cash, of which he keeps a daily account as prescribed by article 303 and following ;

3. The expression "electoral district" means any county or other territory or portion of this Province, entitled to return a member to the Legislative Assembly ;

4. The term "contractor" or "public contractor" means any person who has undertaken or executes, directly or indirectly, alone or with any other person, by himself or by the interposition of any third party, any contract or agreement, expressed or implied, with or for the Government of the Province of Quebec, or with or for any officer of such Government or with or for any municipal corporation or any department or officer of such municipal corporation, for which any public money of the Province, or of such municipal corporation, is paid ;

5. The word "student" means a farmer's son or a proprietor's son as defined in the next two paragraphs, who is absent from his father's or mother's house, with his or her consent, with a view of studying some art or profession ;

6. The words "farmer's son" mean any person who, not being otherwise qualified to vote, is the son of an owner, tenant or occupant of a farm, and include, "grandson", "step-son", and "son-in-law" ;

7. The words "proprietor's son" mean any person who, not being otherwise qualified to vote, is the son of an owner, tenant or occupant of immoveable property, and include "grand-son", "step-son" and "son-in-law";

8. The term "Lieutenant-Governor," wherever employed in this act, shall mean the Lieutenant-Governor in Council ;

9. The word "tenant" means as well the person who pays rent in money, as the person who is obliged to give to the owner a certain part of the revenues and profits of the real estate which he occupies ; and such tenant must there be *tenant feu et lieu*, save in the case of the lessee of a shop, work-shop, farm or office ; 62 V., c. 15, s. 4.

10. The general expression "corrupt practices" (*manœvres électorales*) comprises the acts defined by article 252 ;

11. The word "municipality" means every municipality of a parish or part of a parish, of a township or part of a township, of united townships, of a village, of a town existing under the operation of the Municipal Code, and every town or city municipality incorporated by charter or special act ;

12. The word "occupant" signifies the person residing and keeping house, who occupies immoveable property, otherwise than as owner or tenant, as defined in this act, or usufructuary, either in his own right or in the right of his wife, and who derives the revenue therefrom. 60 V. c. 21, s. 23.

13. The term "election officer" means the returning-officer, the election clerk and all deputy returning-officers and poll-clerks, appointed for an election ;

14. The word "father" includes "grandfather" and "step-father" and the word "mother" includes "grand-mother" and "step-mother" ;

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15. The word "person" comprises any association or assemblage of individuals, whether incorporated or not, and when an act is committed by such association or assemblage of individuals, the members of such association or assemblage, who took part in the commission of the said act, are subject to the penalties and fines enacted by this act;

16. The word "owner" signifies exclusively any one who possesses real estate, or whose wife possesses real estate, whether as owner or usufructuary.

Whenever one person has the mere ownership of real estate, and another has the enjoyment and usufruct thereof to his own use and benefit, the person who has the mere ownership of such real estate shall not be entitled to vote as owner thereof, and the usufructuary shall in such case alone have the right to vote by reason of such real estate;

17. The word "registrar" means the registrar of the registration division which comprises within its limits the electoral district in which the election is held.

It also means the registrar of the registration division comprised within the limits of such electoral district, or the limits whereof are the same as those of the electoral district;

18. The word "secretary-treasurer" includes the clerk of every town or city municipality;

19. The word "farm" means land actually occupied or worked, not less than twenty acres in extent;

20. The words "to vote" mean to vote at the election of a member of the Legislative Assembly of this Province.

3. Any form indicated by a capital letter, in the various provisions of this act, refers to the corresponding form contained in the schedule annexed to this act.

Any of the forms contained in the said schedule is sufficient in the case for which it is intended.

Any other form, having the same meaning, may be employed with equal effect.

4. Any reference to an article indicated in this act without mention of the act of which such article forms part, is a reference to an article of this act.

5. If the time fixed by this act for the accomplishment of any proceeding or formality, prescribed by the provisions thereof, expires or falls upon a Sunday or legal holiday, the time so fixed shall be continued to the next juridical day.

6. Every person, before whom any oath must be taken or affirmation made under the terms of this act, is empowered, and shall be bound, whenever the same is required of him, to administer such oath or affirmation, and to give a certificate thereof, without fee.

7. All the powers and duties, which the Clerk of the Crown in Chancery is called upon to exercise and fulfil in virtue of this act, may with the like effect be exercised and fulfilled by a deputy who is appointed by the Lieutenant-Governor in Council to act in place of the said Clerk of the Crown in Chancery, in cases in which the latter is prevented from acting, owing to illness, absence or other cause.

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SECTION II.

ELECTORS.

§ 1. — *Qualifications of an Elector.*

8. No person shall be entitled to vote at the election of a member of the Legislative Assembly, unless, at the time of voting, he is entered upon the list of electors in force, and is not then legally disqualified in any manner.

9. The following persons, and no other, being males, and who, at the time of the deposit of the list under articles 25 and 26 of this act, are of the full age of twenty-one years, subjects of Her Majesty by birth or naturalization and not otherwise legally disqualified, shall be entered upon the list of electors: 62 V., c. 16, s. 1.

1. Owners or occupants, in good faith, of real property estimated according to the valuation roll in force, at a sum of at least three hundred dollars in real value, in any city municipality entitled to return one or more members to the Legislative Assembly, or two hundred dollars in real value or twenty dollars in annual value in any other municipality;

2. Tenants in good faith, paying an annual rent, for real property, of at least thirty dollars in any city municipality entitled to return one or more members to the Legislative Assembly, or at least twenty dollars in any other municipality; provided such real property be estimated according to such valuation roll, in real value, at, at least, three hundred dollars in any city municipality entitled to return one or more members to the Legislative Assembly, or two hundred dollars in any other municipality;

3. Teachers teaching in an institution under the control of school commissioners or trustees;

4. Retired farmers or proprietors, commonly known as *rentiers* (annuitants), who, in virtue of a deed of donation, sale or otherwise, receive a rent in money or effects of a value of at least one hundred dollars, including lodging and other things appreciable in money;

5 Farmer's sons who have been working for at least one year on their father's farm, if such farm is of sufficient value, if divided equally between the father and son as co-proprietors, to qualify them as voters under this act, or who have been working on their mother's farm, for the same time.

If there are more sons than one, they shall all be entered in so far as the value of the property permits thereof; the eldest being entered first;

6. Proprietors' sons, residing with father or mother; such sons and such property being, and the entry being made, in accordance with the conditions set forth in paragraph 5 of this article, *mutatis mutandis;*

7. Fishermen residing in the electoral district and owners or occupants of real property and owners of boats, nets, fishing gear and tackle, within any such electoral district or portion of an electoral district, or of a share or shares in a registered ship, which together are of the actual value of at least one hundred and fifty dollars;

8. Farmers' sons exercise the above rights, even if the father or mother are tenants or occupants only of the farm.

They exercise them in the same manner as if they were proprietors' sons, with this difference, that it is the annual value of the farm which

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is the basis of the electoral franchise, as in the case, *mutatis mutandis*, of paragraphs 1 and 2 of this article;

9. Temporary absence from the farm or establishment of his father or mother, during six months of the year in all, or absence as a "student" shall not deprive the son of the exercise of the electoral franchise above conferred.

10. Priests, *curés, vicaires*, missionaries and ministers of any religious denomination, domiciled for upwards of five months in the place for which the list is made;

11. Persons who reside in the electoral district for a year, and who draw, from their salary or wages, in money or in effects, or from some business, employment, trade or profession, or from somt investment, a revenue of at least three hundred dollars per annum, or persons who work by the piece in factories and who derive at least three hundred dollars per annum therefrom. 62 V., c. 16, s. 2.

10. The persons who are qualified as electors may be entered on the list of electors upon complaint in conformity with articles 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45, without it being necessary for them to be entered on the valuation roll, which is proof only of the value of the immoveable property. 62 V., c. 16, s. 3.

11. Whenever two or more persons are joint-owners, joint-tenants, or joint-occupants of any real estate valued at an amount sufficient for the share of each to confer upon him the electoral suffrage, each of such persons is deemed to be an elector in conformity with this act and shall be entered upon the list of electors.

He whose share does not amount to the value required for the electoral suffrage shall not be entered as an elector.

The share of each joint-tenant depends upon the amount of rent which each pays.

11*a*. When two or more persons, who each pay an annual rent sufficient to qualify them as electors, are tenants or subtenants, under separate leases, of different portions of the same immoveable property which is valued by a single valuation at a sum sufficient for the share of each to confer on him the electoral suffrage, each tenant and subtenant is an elector in accordance with this act, and shall be entitled to be entered on the list of electors.

If the amount at which the immoveable is valued is not sufficient to confer upon the share of each tenant or subtenant the electoral franchise, so many, as the amount required to confer such franchise is comprised in the figure of the valuation, shall be entered on the list, commencing with the names of the tenants or subtenants whose leases are the oldest. 62 V., c. 16, s. 4.

12. If the real estate is owned or occupied by a corporation, no one of the members of the corporation shall be an elector, nos entered upon the list of electors, by reason of such real estate.

§ 2. — *Persons who cannot be Electors.*

13. The following persons can, in no case, be electors, take part in elections or vote. 60 V., c. 21, s. 25.

1. The judges of the Supreme Court, the Exchequer Court, the Court of Queen's Bench and the Superior Court, the judges of the sessions, district magistrates and recorders;

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2. Clerks of the Crown, clerks of the peace, sheriffs, registrars, Crown lands' and Crown timber agents, collectors of provincial revenue, and the officers and men of the provincial police force.

14. The following persons cannot vote:

1. Contractors having any contract that has not been finished and closed for six months before, with the Government of Canada or that of the Province of Quebec;

2. Every person who, at any time, either before or during an election, for the purpose or with the effect of influencing his vote, is employed, at such election or in respect thereof, by any candidate or by any person whatever as agent, secretary, driver, carter, messenger or in any other capacity, and who has received or expects to receive, either during or after the election, from any candidate or any other person whatever, any sum of money, fee, compensation, office, place or employment, promise, wages or guarantee whatever to the same effect to act in such capacity as aforesaid.

In cities and towns in which there are licensed carters, the word "carter", in this paragraph, means a licensed carter. (60 V., c. 21, s. 26, § c.)

3. Those who have taken an oath of allegiance to any foreign power, or have become naturalized elsewhere;

4. All other persons who have been found guilty, by the Legislative Assembly, or by any court for the trial of controverted elections, or other competent tribunal, of any dereliction of duty, offence or infraction of any of the electoral laws in this province, so long as such incapacity exists under this act.

5. Persons, other than proprietors as set forth in paragraph 16 of article 2, who are entered on the lists of electors, but who, for more than a year and a day, have left their domicile in the Province of Quebec to reside in the United States, unless they have returned to the country with their families one month before the election, with the intention of residing therein.

15. If any of the persons set forth in the two preceding articles votes, save in the case of article 197, he shall incur a penalty of not more than five hundred dollars nor less than one hundred dollars, and imprisonment not exceeding twelve months in default of payment, and his vote shall be null and of no effect.

16. Any person whose disability as an elector or as a voter has ceased, may thereafter, upon application to the judge of the district, and after notice of five days to the secretary-treasurer, upon proof made, obtain the entry of his name upon the list of electors, if there is no other disability.

§ 3. — *Preparation of the List of Electors.*

17. The secretary-treasurer of each municipality shall, between the first and fifteenth day of the month of March, in each year, make in duplicate, subdivided for each polling subdivision, a list, in alphabetical order, of all persons who, according to the valuation roll then in force in the municipality for municipal purposes, appear to be electors by reason of the real estate possessed or occupied by them in any manner within the municipality, or by reason of being otherwise qualified as set forth in article 9. It is the duty of the council of the municipality to see that at

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the time named there is such a secretary-treasurer appointed and competent to act.

In the counties of Gaspé and Bonaventure, however, the secretary-treasurer of each municipality shall, every year, between the first and fifteenth days of the month of July, make the list of electors in duplicate.

18. The secretary-treasurer, in drawing up the list of electors, shall insert the residence of each and his qualification as such, so that it may appear under what head the elector is entered, and the number under which he is entered.

He shall also specify the immoveable property, the revenue in the case of annuitants, as well as the name of the father or mother, if it is as a farmer's son, or proprietor's son that the name is entered; the whole, so that such list may, as nearly as possible, be according to form A.

19. The secretary-treasurer shall omit from the list of electors every person who, under articles 13, 277 or 282, or any other legal provision whatsoever, is not entitled to vote.

He enters, after having closed the list and at the end thereof, the names of the persons so omitted and the reason for their omission.

20. If any municipality is situated partly in one electoral district and partly in another, the secretary-treasurer shall prepare, in the same manner for each of such electoral districts, a subdivided alphabetical list of the persons who are electors therein.

21. If any municipality is divided into voting subdivisions under articles 63, 64 or 65, the secretary-treasurer shall divide the list into as many parts as there are subdivisions in the municipality.

If it is not so divided, he must notify the council to make such division without delay, and after such division, he proceeds to divide the list.

Each such part, the title whereof shall be the number of the subdivision to which it relates, shall contain only the alphabetical list of the electors of such subdivision.

22. If a person is an elector in one and the same municipality by reason of more than one parcel of real estate or more than one title his name shall, nevertheless, be entered but once on the list of elcetors of the municipality.

If the list is drawn up by subdivisions, and one person appears to be an elector in more than one subdivision, his name shall be inserted in one subdivision only; and, if such person is an elector in the subdivision of his domicile, his name shall be entered on the list for such subdivision.

23. In the case of article 20, if a person in an elector in more than one electoral district, his name shall be entered in the list of each electoral district, but in only one voting subdivision in each district in which he is an elector, according to the rules laid down in the preceding article.

24. The secretary-treasurer shall certify the correctness of the list of electors by him made under the following oath, taken before a justice of the peace:

"I (*name of secretary-treasurer*), swear that, to the best of my knowledge and belief, the foregoing list of electors is correct, and that nothing has been inserted therein or omitted therefrom, unduly or by fraud: So help me God."

Each duplicate list must be attested separately under the foregoing oath.

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25. One of the duplicates of the list so attested shall be kept in the office of the secretary-treasurer at the disposal and for the information of all persons interested.

26. The secretary-treasurer, within two days from the day upon which he shall take the oath required by article 24, shall give and publish a public notice, setting forth that the list of electors has been prepared according to law, and that a duplicate thereof has been lodged in his office, at the disposal and for the information of all persons interested.

Such notice shall be given and published in the same manner as notices for municipal purposes, in the municipality in which the list has been prepared.

27. The list of electors may be drawn up in accordance with form A on uniform printed blanks.

28. If the secretary-treasurer has not made the alphabetical list of electors, or has not given or published the notice required by article 26, during the first fifteen days of the month of March, the judge of the Superior Court for the district, or, in the event of the absence of the district judge, or if his inability to act, a judge of a neighboring district or the district magistrate, on summary petition of the mayor, the registrar or any other person entitled to be entered as an elector in the municipality, shall appoint a clerk *ad hoc* to prepare the alphabetical list of electors. The judge or magistrate, as the case may be, shall ascertain whether the subdivision into polling districts has been made, and order their making when necessary.

29. The secretary-treasurer shall be personally liable for the costs incurred on such petition, and for those incurred in drawing up the list by the clerk *ad hoc*, unless the judge or the district magistrate, for special reasons, deems it advisable to order otherwise, and, in such case, the costs shall be left to their discretion.

The secretary-treasurer may, however, draw up and prepare the list so long as the clerk *ad hoc* shall not have been appointed.

30. Within fifteen days after notice of his appointment the clerk *ad hoc* shall proceed to the preparation of the list of electors.

He shall, for such purpose, become an officer of the municipal council; he shall have the same powers to exercise and the same duties to discharge as the secretary-treasurer of the municipaity, and shall do so under the same penalties in case of default or neglect on his part.

31. In so far as the same is incumbent upon them, the mayor and the officers of the council shall be bound to deliver to the clerk *ad hoc*, on his demand, the valuation roll, which is to avail as the basis of the list of electors, under a penalty against each not exceeding two hundred dollars, and in default of payment of imprisonment not to exceed six months.

They are bound, under the same penalty, to make the polling subdivisions so that the lists of electors may be prepared and completed within the delays.

§ 4. — *Examination and putting into force of the List.*

32. Upon complaint in writing to such effect, under either of the two following articles and not otherwise, the list of electors may be examined

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and corrected by the council of the municipality, within the thirty days next after the expiration of the delay prescribed for the preparation of the list or, if the list has been completed after the expiration of the said delay, within the thirty days after the notice given in virtue of article 26, 63 V., c. 11, s. 1.

33. Any person, who deems himself aggrieved either by the insertion in or omission of his name from the list, may, either by himself or through his agent, file in the office of the secretary-treasurer, a complaint in writing to such effect, within the fifteen days next after the expiration of the delay prescribed for the preparation of the list or, if the list has been completed after the expiration of the said delay, within the fifteen days after the notice given in virtue of article 26, 63 V., c. 11, s. 2.

34. Any person, believing that the name of any person entered on the list should not have been so entered, owing to his not possessing the qualifications required for an elector, or believing that the name of any other person not entered thereon should be so entered, owing to his possessing the qualifications required, may file, in the office of the secretary-treasurer, a complaint in writting to such effect, within a like delay of fifteen days.

35. Before proceeding to any examination or correction of the list of electors, the council shall cause to be given, through the secretary-treasurer, the clerk *ad hoc*, or any other person, public notice of the day and hour at which such examination shall begin.

Previous to taking into consideration the complaints in writing filed in the office of the council with respect to the list of electors, the council shall also cause a special notice to be given to every person, the insertion or omission of whose name upon the list is demanded.

The public notice and the special notice required by this article shall be of five days' duration ; and they shall further be given and published or served in the same manner as notices for municipal purposes in the municipality within which the list has been prepared.

There is allowed to the secretary-treasurer, at the cost of the party complaining, a fee of twenty-five cents for each special notice by him given to any person whose name shall neither be added to nor struck from the list by the council, or by the judge if there is an appeal, as hereinafter provided.

The giving of public and other special notices is part of the general duties of the secretary-treasurer.

36. The council on proceeding to the examination, first verifies the correctness and regularity of the proceedings had in preparing the list, and draws up a *procès-verbal* thereof, then takes into consideration all the complaints in writing, relating to the said list, and hears all persons interested and their proof on oath, if necessary.

37. The council, by its decision on each complaint, may confirm or correct each of the duplicates of the list : then, if necessary, it redivides the list in consequence thereof, according to the polling subdivisions, keeping the alphabetical order of the electors thereon.

38. If, upon sufficient proof, the council is of opinion that a property has been leased, assigned or made over under any title whatsoever, with the sole object of giving to a person the right of having his name entered on the list of electors, it shall strike the name of such person from the

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said list, upon complaint in writing and on evidence under oath taken before the mayor or the secretary-treasurer being made to that effect.

39. Every insertion in, erasure from, or correction of the list, in virtue of the two preceding articles, shall be authenticated by the initials or *paraphe* of the officer presiding the council.

40. The list of electors comes into force at the expiration of the thirty days following the expiration of the delay prescribed for the preparation of the list or, if the list has been completed after the expiration of the said delay, within the thirty days after the notice given in virtue of article 26, as it then exists, and remains in force until the month of July following for the counties of Gaspé and Bonaventure, and until the month of March following for the rest of the Province, and, thereafter, in all cases, until a new list is made and put into force under the authority of this act. 63 V., c. 11., s. 3.

Notwithstanding the appeal to a judge of the Superior Court, or to a district magistrate in districts in which there is no judge of the Superior Court, touching a portion of the list, such portion of the said list shall remain in force until the final decision of the court before which the said petition in appeal is pending.

41. Saving, nevertheless, any correction made under article 50, every list of electors so put into force, even although the valuation roll which has served as the basis of such list be defective or shall have been quashed or set aside, shall, during the whole period during which it remains in force, be deemed the only true list of electors, within the territorial division to which it relates.

42. So soon as the list of electors has come into force it shall be the duty of the secretary-treasurer to insert at the end of such list, on the duplicates thereof, the certificate set forth in form B.

43. One of the duplicates of the list of electors shall be kept in the archives of the municipality.

Within eight days following the day upon which such list comes into force, the other duplicate shall be transmitted to the registrar of the registration division in which the municipality is situated, by the secretary-treasurer or by the mayor, under a penalty against each of them, in case of a contravention of this provision, of a fine of two hundred dollars and of imprisonment for six months in default of payment.

Nevertheless, the transmission of the duplicate of the list to the registrar, after the delay prescribed by this article, or the fact of the same not having been transmitted shall not have the effect of invalidating such list.

44. If, in lieu of the duplicate required by the preceding article, a certified copy of the list have been transmitted to the registrar, such copy shall be deemed to be the duplicate required, and shall have the same effect as if the duplicate had itself been transmitted.

45. All duplicates or copies of lists of electors transmitted to the registrar under the two preceding articles, are preserved by such officer, and remain of record in his office.

On receipt of the said duplicates or copies, the registrar shall enter upon each the date of the reception thereof.

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§ 5. — *Appeal to a Judge.*

46. By means of a petition, in which are briefly set forth the reasons of appeal, any elector of the electoral district may, within fifteen days following such decision, appeal from any decision of the council, confirming, correcting or amending the list, to the judge of the Superior Court of the district.

The respondent may, in all such appeals, obtain a suspension of the proceedings, until the appellant has given such security as may be considered necessary in the discretion of the court or judge, or deposited with the clerk of the court such sum as may be specified by the court or judge for the payment of the costs on such appeal.

47. In any district in which there is no resident judge of the Superior Court, the appeal may, however, be brought before the district magistrate for such district, in the same manner and with the same effect as before the judge of the Superior Court.

48. If, within the time prescribed, the council has neglected or refused to take into consideration a complaint duly filed, any person may appeal to such judge therefrom, in the manner and within the delay of fifteen days after the expiration of the thirty days prescribed in article 32.

49. A copy of the petition in appeal is served upon the secretary-treasurer of the municipality, who immediately gives special notice thereof to the mayor, and special notice to the parties interested.

50. The judge of the Superior Court shall have full power and authority to hear and decide such appeal in a summary manner, on the day and at the place which he shall fix, and shall proceed without delay, from day to day, in term or in vacation.

Such appeal shall have precedence over other causes.

51. The judge may also order that further notice be given to any of the parties to the cause, may summon before him and interrogate under oath or affirmation any party or witness, and require the production of any document, paper or thing.

He may *ex officio* order the correction of any apparent formal irregularity or error found therein and give any order so that the law on the matter may have its full force and effect.

He shall, for such purpose, possess all the powers conferred upon the Superior Court in relation to matters pending before that court.

52. No proceedings on such appeal shall be annulled for defect of form.

53. The costs of appeal shall be taxed in the discretion of the judge, for or against such of the parties as he shall deem advisable, even against the corporation of the municipality, and shall be recoverable under a writ of execution issued in the usual manner, provided that the said costs do not exceed the costs of a Circuit Court case. 60 V., c. 21, s. 27.

54. The decision of the judge is final.

55. The secretary-treasurer and the registrar shall each correct the duplicate of the list of electors in their possession according to the decision of the court, immediately upon authentic copies thereof being served upon them.

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§ 6. — *Miscellaneous.*

56. If, at any time, it is made to appear to any judge of the Superior Court, in term or vacation, that the secretary-treasurer of any municipality, or the registrar of the registration division or other person has altered or falsified, or permitted the alteration or falsification, of the duplicate of the list in the possession of either, the judge shall require the secretary-treasurer, the registrar and every person having the custody of the valuation roll, which served as the basis of the lists, to appear before him and to produce the rolls and lists in their possession.

57. At the time and place fixed for the appearance of such persons, the judge, after having examined the duplicates of the list produced by the secretary-treasurer and the registrar, together with the valuation roll, shall, with or without further proof, make the alterations or corrections which he shall deem necessary, to render the duplicate so altered or falsified, accurate and faithful.

58. It shall be the duty of the secretary-treasurer of every municipality and of the registrar of every registration division, having the custody of a list of electors, to deliver certified copies thereof to any person applying therefor, and offering to pay, for the cost of any such copy, at the rate of three cents for every ten electors entered on the list.

59. The secretary-treasurer of every municipality shall furnish gratis, on demand, to every deputy returning-officer acting within the limits of the municipality, a certified copy of the list of electors to avail at the election, or of that part of such list which relates to the locality for which such deputy returning-officer acts.

60. The cost of all copies of the list of electors given by the registrar, in consequence of the secretary-treasurer having refused or neglected to furnish the same, under article 59, may be recovered from such secretary-treasurer or the corporation whose officer he is, either by the registrar who has given the copies, or by the returning-officer or deputy returning-officer who shall have procured the same.

61. Every secretary-treasurer who has refused or neglected to make the alphabetical list of electors as required by this act, or who, in making the list, has knowingly inserted therein or omitted therefrom any name which should not have been so inserted or omitted and has so furnished it, after having attested it on oath according to law, shall incur a penalty not exceeding five hundred dollars, and, in default of payment, imprisonment not exceeding twelve months.

62. Every person, having the custody of lists of electors and whose duty it is to deliver copies thereof, who shall knowingly make any insertion or omission, in the copies furnished and certified by him, shall also incur the penalty prescribed in article 61.

§ 7. — *Voting Subdivisions.*

63. Whenever, in any municipality, the number of electors shall exceed two hundred, it shall be the duty of the council of such municipality, by a by-law made in the ordinary way, to divide, before the first of March following, the municipality into voting subdivisions, so that there

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shall not be more than two hundred electors in each voting subdivision.
The limits of these subdivisions shall be well defined, and shall not divide any real estate under which an elector is entitled to vote.

64. Whenever any one of such voting subdivisions shall contain more than two hundred electors, it shall be the duty of the council, by by-law, to subdivide, before the first of March then following, such voting subdivision into others not containing more than two hundred electors each.

65. For the greater convenience of the electors, the council may always, and at any time, amend or repeal any by-law made under articles 63 and 64, and may make a new division as provided by article 63.

66. No by-law made under articles 63, 64 and 65 shall be liable to be appealed to the county council.

67. Every by-law or municipal order dividing a municipality into subdivisions or other analogous subdivisions, in force upon the passing of this act, shall so remain until the same is replaced or repealed under the authority of the above articles.

SECTION III.

HOLDING OF ELECTIONS.

§ 1. — *General Provisions.*

68. Whenever a proclamation orders that a new Legislative Assembly shall be elected, and a general election is for that purpose held, the nominations of the candidates at the different elections in all the electoral districts of the Province shall take place and be held upon the same day.
Such day is fixed and determined by the Lieutenant-Governor in the proclamation ordering the general election.

69. In the case of a particular election to fill a vacancy, the day of the nomination of the candidates at such election shall be fixed by the Lieutenant-Governor.

70. Every writ of election shall mention the day so fixed for the nomination of the candidates at the election for which such writ shall have been issued, and also the day for the polling.

71. Nevertheless, in the electoral districts of Gaspé, and of Chicoutimi and Saguenay, the day for the nomination of the candidates is left to the selection of the returning-officer, who shall fix the same in his proclamation as he may deem advisable, without unnecessary delay, subject to the application of article 98.

72. The nomination of candidates shall not take place upon any holiday.

73. In the event of the destruction or less of any writ of election, before the same has been received by the returning-officer, or, in the event of the latter dying before receiving such writ, or in the event of any other occurrence rendering it impossible to hold the election on the day mentioned in the writ, a new writ may be issued in which the

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day of nomination and that of the return may be changed, as circumstances require.

74. Every writ of election shall bear date and be returned on the days which shall have been fixed by the Lieutenant-Governor, saving the case provided for by article 204.

75. At the general elections all writs of election shall be issued upon the same day, and shall bear the same date of issue.

76. The voting in all the electoral districts shall take place on the seventh day next after that of the nomination of candidates, that is, the corresponding day of the week next after that in which the nomination has taken place.

If such seventh day is a holiday, the voting shall take place on the first following day not a holiday.

In the electoral districts of Gaspé and of Chicoutimi and Saguenay, the day of voting shall be fixed by the returning-officer; provided that the day so fixed is not a holiday, and that it is not removed from that of the nomination, for Gaspé less than fifteen nor more than thirty days, and for Chicoutimi and Saguenay, less than eight nor more than fifteen days.

77. Every writ of election shall be addressed by name to one of the persons who can act *ex-officio* as returning-officer for the electoral district, or, in default of such person, to a person who being competent to discharge such office, shall be appointed by the Lieutenant-Governor under paragraph 4 of article 80.

78. Writs of election shall be drawn up in accordance with form C, and, unless the Lieutenant-Governor otherwise orders, they shall be forwarded by mail to the different returning-officers, or delivered to them in person.

79. A notice of the issue of the writ, specifying the name of the returning-officer, shall be at the time addressed and transmitted to every registrar of the electoral district who is not to be a returning-officer.

§ 2. — *Returning officers and others.*

80. The following persons may act *ex-officio* as returning-officers:

(*a*) The registrar, for each electoral district wholly or in part comprised in the registration division of which he is the officer.

(*b*) The sheriff or the prothonotary, for each electoral district wholly or in part comprised in the judicial district for which he is appointed.

2. If two or more persons have been appointed to fill the same office of sheriff or registrar, each of such persons may act *ex-officio* as returning-officer.

If, within an electoral district, there are two or more registration offices and a registrar for each of these offices, each such registrar may act *ex-officio* as returning-officer in that electoral district.

3. In all cases the person to whom the writ of election has been addressed and transmitted, shall act alone as returning-officer at such election, even if he holds jointly with one or more other persons the office entitling him to act *ex-officio*.

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4. If there is no person in the electoral district authorized to act *ex-officio* as returning-officer, or if those authorized to act in such capacity are prevented from so acting, or refuse to fill such office, the Lieutenant-Governor may appoint a competent person to perform the duties of returning-officer.

81. The following persons shall not be appointed returning-officers, deputy returning-officers, election clerks or poll-clerks :

1. The persons mentioned in articles 13 and 14, saving sheriffs, registrars, and clerks of the Crown when they are at the same time prothonotaries, and their deputies ;

2. Persons who were members of the Legislative Assembly or Legislative Council, in the session immediately preceding the election, or in the session then being held, if the election take place during a session of the Legislature, unless such person holds at the time of the issue of the writ of election one of the offices mentioned in paragraphs 1 and 2 of article 80.

3. Ministers, priests and ecclesiastics of any religious creed or denomination ;

4. Persons who have been found guilty :

(*a*) Of any offence punishable by imprisonment for more than two years ; or

(*b*) Of any corrupt practice whatever, in contravention of the law respecting elections, whether of the Dominion of Canada or of the Province of Quebec.

§ 3. — *Proceedings on receipt of the writ of Election.*

82. The returning-officer, or receipt of the writ of election, shall, without delay, endorse upon such writ the date of the reception thereof.

83. The returning-officer, before acting in a further manner, shall take and subscribe, before a justice of the peace, the oath specified in form D ; and the justice of the peace shall deliver to him a certificate of the taking of such oath, according to form DD, which must be written on the writ of election.

84. Unless he is returning-officer, every registrar shall, under a penalty not exceeding two hundred dollars, and imprisonment not exceeding six months in default of payment, transmit, without delay, upon receipt of the notice given under article 79, to the returning-officer, a copy certified by him of each of the lists of electors in force for the electoral district, which have been deposited in his office.

The registrar shall be entitled to a fee of three cents for every ten electors entered upon any copy so transmitted, which shall form part of the general expenses of election.

§ 4. — *Appointment and duties of the Election Clerk.*

85. The returning-officer shall appoint, without delay, by commission under his hand, according to form E, a competent person as his election clerk, to assist him in the execution of his duties.

86. Before acting as such, the election clerk shall take the oath prescribed in form F, before the returning-officer or a justice of the peace, who shall give him a certificate according to form FF, which are also written on the writ of election.

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87. If the election clerk appointed dies, or is prevented from performing his duties through sickness, absence or other forcible cause, or if he refuses to continue in such office, or neglects to perform the duties of the same, the returning-officer shall, in the same manner, after having annulled his first appointment, appoint another competent person to be his election clerk.

The new election clerk shall be bound to perform all the duties and obligations of such office under the same penalties as the former, in case of refusal or neglect on his part.

88. Whenever the returning-officer is incompetent, becomes unable to perform the duties of his office, or refuses to discharge the same, and has not been replaced by another person, the election clerk shall be the returning-officer for the election, as if he had been duly appointed to that office, and shall perform all the obligations thereof, under the same penalties as those prescribed in relation to the returning-officer, without being bound to take any further oath.

In the case of the change of a returning-officer, the election clerk continues in office, unless he is replaced by another, in the discretion of the new returning-officer, in the manner above prescribed.

§ 5. — *Establishment of Polls.*

89. The returning-officer shall establish a poll in each voting subdivision, which shall appear, by the list of electors in each municipality, to have been established under articles 63, 64 and 65.

90. The polls shall be established in central and commodious localities, in such manner as to be at a distance of not less than two hundred yards apart from each other in any city, town or village municipality, and of one mile apart in any other municipality.

91. Electors shall vote only in the voting subdivision in which is situated the property entitling them to vote.

§ 6. — *Proclamation announcing the Election.*

92. Within the eight days next after the receipt of the writ of election, the returning-officer shall, by proclamation under his hand, according to form G, published in the French and English languages, and posted up in the voting subdivision at the most important and public places, set forth :

1. The place, day and hour at which the nomination of candidates shall take place ;

2. The day upon which the polls shall be opened, if voting becomes necessary :

3. The appointment of his election clerk.

93. The locality specified for the nomination of candidates shall be the court-house, the city-hall, the registry office, or any other public or private building, in the most central and convenient position for the majority of the electors of each electoral district.

94. The hour fixed for the nomination of candidates shall be between noon and two o'clock in the afternoon.

95. The returning-officer shall publish at length and post up, at the

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same time and in the same places as his proclamation, the provisions respecting corrupt practice enacted by articles 243, 245, 246, 247, 248, 249, 250, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 279, 280, 281, 282, 283, 285 and 287 of this act, and articles 588, 589, 590 and 591 of the Revised Statutes.

96. The returning-officer shall cause the proclamation to be posted up at least eight days before the day of the nomination of the candidates, the day of the posting and that of the nomination not being included in such delay.

If any municipality has been divided into wards, the proclamation shall be posted up in four of the most public and conspicuous places in each ward of the municipality.

97. When the returning-officer, or the election clerk, or a deputy returning-officer is by this act required to give any public notice, and no special mode of giving the same is mentioned, he may give the same by advertistment, placards, hand-bills, or such other means best calculated to give information to the electors.

98. Any proclamation announcing an election in the electoral districts of Gaspé, and of Chicoutimi and Saguenay may be published and posted up within the twenty days next after the receipt of the writ of election, by the returning-officer; provided the same be posted up, throughout the whole district, at least fifteen days for Gaspé, and eight days for Chicoutimi and Saguenay, before the day of nomination.

99. If, owing to unforeseen delays, accidents or other causes, the proclamation cannot be posted up, so as to allow the period required between the day of the posting and that of the nomination, or, if any one of the persons brought forward as candidates should die before the close of the poll, the returning-officer may fix another day for the nomination of candidates.

Such day shall be the earliest possible after the expiration of the delay required between the day of the posting and that of the nomination.

In all other respects the whole of such election shall be conducted as other elections governed by this act.

The returning-officer, in his return of the election, shall transmit to the Clerk of the Crown in Chancery a special return of the reasons which so occasioned the postponement of the election.

§ 7. — *Nomination of Candidates.*

100. Every candidate shall be nominated or brought forward as candidate by means of a nomination paper made in accordance with the rules hereinafter specified and in the form H.

101. Each nomination paper shall be signed by at least twenty-five electors qualified to vote in the electoral district for which the election is held, and shall give the name and surname, residence, profession or description of the candidate, in such manner as sufficiently to establish his identity.

The mark, affixed upon the nomination paper by any elector unable to write, shall be deemed to be the signature required, according to the meaning of this act.

102. Each nomination paper shall be accompanied by the consent in

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writing of the person nominated, except such person be absent from the Province.

In the latter case, the nomination paper shall set forth his absence.

103. The nomination papers shall be filed with the returning-officer at the hour and place indicated in the proclamation, by any one of the subscribing electors, or by the person nominated, or by any one on their behalf.

104. The nomination papers may, however, be filed with the returning-officer in person at any other place and at any other time, between the date of the proclamation and the time fixed for the nomination, with the same effect as if produced at the time and place set forth in the preceding article.

105. A sum of two hundred dollars, in gold, silver, Dominion notes or bills of an incorporated bank doing business in this province, shall be paid into the hands of the returning-officer by each candidate, on the delivery of the nomination paper to that officer.

This sum shall not be liable to seizure and shall be returned to the candidate in the event of his being elected, or, if not elected, of his obtaining at least one half the number of votes counted, in favor of the candidate elected; otherwise it shall belong to the Province.

Of the different sums so paid, those which could not be withdrawn shall be applied by the returning officer towards the payment of the election expenses; and an account thereof be rendered to the Provincial Treasurer.

106. Every nomination paper shall also be accompanied by one or more affidavits, in the form I, sworn before the returning-officer or a justice of the peace, and setting forth:

That the deponent knows that the subscribers to the nomination paper, or at least twenty-five from among them, are electors entered, as duly qualified, upon some of the lists of electors in force in the electoral district, and that they have signed the nomination paper in his presence.

2. That the consent of the candidate was subscribed in presence of the deponent, or that the person nominated is absent from the Province.

107. The capacity of elector and the signature or mark of each of the subscribers to the nomination paper, or of at least twenty-five of them being electors qualified to vote, shall be so established by affidavit; but they may be so established in one or more separate affidavits, and by one or more different persons.

108. The consent of the candidate may also be established by the oath of another person.

109. If the nomination paper is produced by the candidate himself, the returning-officer shall require such candidate to make oath before him, that the signature subscribed to the consent is his signature, and an entry thereof is made at the end or on the back of the nomination paper, and, in such case, the affidavit of another person, in relation to the consent of the candidate, shall not be required.

110. No nomination paper shall be valid or carried into effect by the returning officer, unless it is made and delivered in conformity with the formalities prescribed by articles 100 to 109, inclusively.

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But, on accepting and having examined the same, the returning-officer must, at once, declare whether he considers it valid, and give effect to his declaration by entering thereon under his signature the word "admitted" or the word "rejected", with, in the latter case, the reasons for such rejection.

The nomination paper may then be corrected or replaced by another nomination paper, so long as the delay has not expired.

111. The receipt, which the returning-officer shall give on demand, shall be sufficient evidence that the nomination paper and the written consent of the candidate have been regularly produced, and that the required sum has been paid.

112. The returning-officer shall endorse on the nomination paper the fact of the production of any affidavit given under article 106, 107 or 108, as the case may be, and of the taking of the oath under article 109.

113. If, at the expiration of the delay fixed for the nomination, one person only be placed in nomination, the returning-officer shall forthwith report to the Clerk of the Crown in Chancery, in the form J, that such candidate has been elected.

114. He shall transmit, within the forty-eight hours following, a duplicate or certified copy of his return to the person elected.

115. The returning-officer shall accompany his return with a report of his proceedings, in which he shall mention any nomination rejected by him for non-compliance with the requirements of this act.

116. If, on the contrary, there be more candidates than one, it shall be the duty of the returning-officer to adjourn the election for the opening of the poll.

117. After the delay fixed for the nomination has elapsed, the returning-officer shall deliver *gratis* until every candidate or the agent of every candidate, on demand to that effect, a certified list of the names of the persons nominated.

All votes given at the election for persons other than those so nominated shall be null.

118. Any nominated candidate may, at any time, before the closing of the poll, retire by filing with the returning-officer a declaration in writing to that effect, signed by himself.

Such declaration, to be valid, shall be accompanied by an affidavit of one or more persons, sworn before the returning-officer, his election clerk or a justice of the peace, establishing that the candidate withdrawing, voluntarily, and after reading such declaration, signed the same in his or their presence.

All votes given in favor of a candidate, who shall have thus retired, shall be null and must be set aside.

119. If, owing to such withdrawal, one candidate only remains, it shall be the duty of the returning-officer to declare him elected, without waiting for the day fixed for holding the poll, or for the closing of the poll if such withdrawal is filed on the polling day.

§ 8.—*Qualification of Candidates.*

120. No person shall be elected a member of, or vote, or sit as such

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in the Legislative Assembly who is not at least twenty-one years of age, of the male sex, a subject of Her Majesty by birth or naturalization, free from all legal disability, and in the enjoyment of his civil and political rights.

121. No person further shall be elected a member of the Legislative Assembly, or be a member of the Legislative Council, or sit or vote as such, who occupies a permanent salaried position under the Government of Canada, the Province of Quebec or any other province of Canada, and who receives regular wages or emoluments from the public departments of any of the said governments, saving the salaries of the Speaker of the Legislative Assembly and of the Legislative Council of this Province, and the legislative indemnity of the members of such Houses.

2. Nothing in this article, however, shall prevent the Speaker of the Senate, nor any Senator from so sitting or voting in the Legislative Council, by reason of the salary, fees or emoluments received by them in such capacity, nor any member of the Privy Council who is not disqualified from sitting or voting in the House of Commons of Canada.

3. Neither shall anything in this article render an officer of the militia or militia man, not on permanent pay as an officer of the militia staff, ineligible for or disqualified from sitting or voting by reason of the pay, fees or emoluments received by him in such capacity.

4. In the case of persons receiving a regular salary or emoluments from the Government of Canada on account of permanent positions occupied by them, the present article shall affect only those whose salaries or emoluments so received amount to over one thousand dollars per annum.

§ 9.—*Proceedings preliminary to voting.*

122. When a poll is necessary, the returning-officer shall cause notices to be posted up, in the form K, announcing the fact of a poll being about to be held in the electoral district and specifying the names, domiciles and occupations of the persons nominated in the order in which they are printed in the ballot-papers mentioned in article 134, and the names, occupations, domiciles and addresses of their agents, in the manner prescribed by article 200.

He shall, at the same time, post up printed copies of the directions for the guidance of electors in voting, as also a list of the different polls established by him, together with the territorial limits of each of such polling subdivisions, according to their names and numbers.

123. Such notices and directions shall be posted up, as soon as possible after the nomination of the candidates, in all places in which the proclamation announcing the election has been posted up.

124. The returning-officer shall procure for himself the different lists of electors, or certified copies or extracts from such lists, from the registrars, clerks, secretary-treasurers or other officers, who are the lawful custodians thereof.

Every officer neglecting or refusing to furnish such copies or extracts of lists of electors, within a reasonable delay, to the returning-officer applying for the same, shall incur a penalty of two hundred dollars, and imprisonment for six months in default of payment.

125. The returning-officer shall in no case, have the right to decide upon the validity or sufficiency of the list of electors, or to subdivide the polling subdivisions.

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§ 10. — *Deputy returning-officers.*

126. The returning-officer, by commission under his hand according of form L, shall appoint a competent person to act as deputy returning-officer, at each poll established by him.

127. If a deputy returning-officer dies or is prevented from discharging office by sickness, absence or other cause, or, if he refuses to accept such office, or neglects to discharge the duties thereof, the returning-officer shall appoint another person competent to act as deputy returning-officer, and cancel his first appointment.

The new deputy returning-officer shall be bound to discharge all the obligations of such office, under the same penalties as the first in case of refusal or neglect.

128. Each deputy returning-officer shall, before acting as such, take and subscribe, before the returning-officer or before a justice of the peace, the oath set forth in form M, and certificate, according to form N, of the taking of such oath, signed by the returing-officer or justice of the peace, shall be delivered to him by the person administering the same. He shall keep them and return them with the other election documents.

129. It shall be the duty of the returning-officer to furnish to each deputy returning-officer the list, or a copy of or extract from the list, containing the names of the electors entitled to vote at the poll for which he is appointed.

Each copy of and extract from the list shall be certified, either by the returning-officer as being that regularly furnished to him, or by the legal custodian of the lists from which such copies or extracts are taken.

130. If the list, copy or extract in the possession of any deputy returning-officer has been lost or destroyed, it shall be the duty of the returning-officer to provide that another certified list, copy or extract be supplied to such deputy returning-officer.

131. The returning-officer shall, at least two days before the voting, deliver to each deputy returning-officer a ballot-box to receive the ballot-papers of the electors.

Such ballot-box shall have a slit or narrow opening in the top, so constructed that the ballot-paper may be introduced therein, but cannot be withdrawn therefrom without opening the box, and shall be made of durable materials, with lock and key.

132. When the returning-officer has not supplied the deputy returning-officer with the ballot-box within the delay prescribed in the preceding article, or when the same has been taken away or lost, it shall be the duty of the latter to cause one to be at once made.

133. The returning-officer shall furnish the deputy returning-officer of each poll with a sufficient number of ballot-papers to supply the number of electors entitled to vote at such poll ,and with the necessary materials for the voters to mark their ballot-papers.

All ballot-papers shall be of the same description, and, as nearly as possible, alike.

134. The ballot-paper of each elector shall be a printed paper with an annex, drawn up according to form O, specifying the names and desi-

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gnation of the candidates, alphabetically arranged in the order of their surnames or if there are several candidates with the same surname, in the order of their christian names.

The names and designation of each candidate shall be set forth on the ballot-paper, as in the nomination paper.

135. Notwithstanding article 134, the Lieutenant-Governor in Council may, before the date fixed for the general elections which will follow the dissolution of this Legislature, order that the ballot-paper commonly known as "Durocher's improved ballot slip", made according to form OO. be, for the purposes of the said general elections, substituted to the ballot-paper mentioned in article 134.

The Order in Council authorizing the use of the said "Durocher's ballot" shall be published in the *Quebec Official Gazette* during one month. and such ballot-paper shall be employed only after the expiration of one month after the last publication of the said Order in Council.

136. In the case provided for by article 135, the rules to be followed by the elector in voting are as follows :

The elector, on receiving the ballot-paper, shall forthwith proceed into once of the private compartments of the poll, and there shall mark his ballot-paper, marking a cross with a pencil, in the circular space of the ballot opposite the division containing the name of the candidate for whom he intends to vote, after which he shall fold it, so that the initials endorsed thereon may be seen without opening it, and hand it to the deputy returning-officer, who shall ascertain by examination of his initials, and of the printed number on the annex, that such ballot-paper is the same supplied by him to the voter, and, after having detached the annex, he shall, immediately and in the presence of the voter, place the ballot in the ballot-box.

137. The ballot-paper must be printed on paper sufficiently thick so that the pencil mark shall not appear through it on the back.

A table or desk with a smooth surface shall be provided, whereon the ballot-paper may be marked in the private compartment.

The pencil must be the same for all and be securely attached by a string.

138. If a candidate retires too late to allow of the printing of new ballot-papers, and polling is proceeded with for other candidates, the deputy returning-officer makes use of the ballot-papers in hand after plainly striking out, in a uniform manner by a line in ink, the name of the candidate who has withdrawn, and such ballot-papers shall serve for all the purposes of the election.

The ballot-papers must be bound or stitched so as to form a book and be numbered on the annex by the printer from No 1 to 250, which form the book.

139. The returning-officer shall also furnish to each deputy returning-officer at least ten copies of the printed directions for the guidance of voters in voting.

The deputy returning-officer shall, on the day of the voting, at or before the opening of the poll, cause copies of such directions to be posted up in some conspicuous place outside of the poll, and also in each compartment of the poll.

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§ 11. — *Poll-Clerks.*

140. Each deputy returning-officer shall forthwith appoint, by a commission under his hand, according to form P, a competent person as poll-clerk, to assist him in the execution of his duties.

141. If the poll-clerk dies, or is prevented from executing his office by illness, absence or other cause, or if he refuses to accept such office, or neglects to discharge the duties thereof, the deputy returning-officer shall appoint another person competent to act as poll-clerk, and cancel his first appointment.

The new poll-clerk shall be bound to discharge all the obligations of such office, under the same penalties as the first, in case of refusal or neglect.

142. Every poll-clerk shall, before acting as such, take and subscribe, before the returning-officer or the deputy returning-officer who appointed him, or before any justice of the peace, the oath set forth in form Q.

A certificate of the taking of such oath shall be delivered to him according to form R, by the person administering the same, and under his hand.

143. The poll-clerk, at the poll for which he shall have been appointed, shall be bound to aid and assist in the execution of his duties the deputy returning-officer appointed to keep the poll at such place, and to obey the orders of such deputy returning-officer.

144. In the event of the deputy returning-officer refusing or neglecting to discharge the duties of his office, or becoming unable to do so, and of no other deputy returning-officer, appointed instead of the former, presenting himself at the poll, the poll-clerk shall, under the same penalties as those imposed upon a deputy returning-officer, act as deputy returning-officer, and, without being obliged for such purpose to take any new oath, shall fulfil all the duties and obligations thereof, in the same manner as if he had been appointed deputy returning-officer.

145. Whenever any poll-clerk shall act in the case provided for in the preceding article, he shall have power to appoint, by commission under his hand, according to form S, another person as poll-clerk to aid and assist him, and to administer to such person the oath required of a poll-clerk under this act.

Such poll-clerk shall have the same obligations to discharge as if he hand been appointed by the deputy returning-officer, and shall incur the same penalties in the event of refusal or neglect.

§ 12. — *Voting.*

146. The voting shall take place in a room or building of convenient access, with a door for the admission of the voters, and having, if possible, another for exit.

147. One or two compartments shall be made within the room, so arranged that each voter may be screened from observation, and may, without interference or interruption from any person whomsoever, mark his ballot paper.

148. Each deputy returning-officer shall open the poll assigned to

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him at the hour of nine of the clock in the morning, except in the case of the following article, and shall keep the same open until five of the clock in the afternoon.

He shall, during that time, receive, in the manner hereinafter prescribed, the votes of the electors duly qualified to vote at such poll and applying to vote thereat.

149. In cities or towns having a population exceeding ten thousand souls, the polls must be open from seven o'clock in the morning: and from that hour, until nine o'clock, workmen, artisans and employees in factories have precedence in voting.

150. In addition to the deputy returning-officer and the poll-clerk, no person other than the candidates and their agents, not exceeding two in number for each candidate, shall be permitted to remain in the room where the votes are given during the whole time the poll remains open.

In the absence of the agents of any candidate, two electors may, on application to that effect, represent such candidate.

151. One of the agents of each candidate, or, in the absence of such agent, one of the electors representing a candidate under the preceding article, shall take the oath, in the form T, to keep secret the names of the candidates for whom any of the voters may have marked his ballot-paper in their presence, as prescribed by article 163, and no one but them alone and one of the two officers in the poll-house can assist at such vote, excluding the second agent or other elector.

152. At the hour fixed for opening the poll, the deputy returning-officer and the poll-clerk shall, in the presence of the candidates, their agents, or the electors present, open the ballot-box and ascertain that there are no ballots or other papers in the same.

The box shall thereafter be at once locked, and the deputy returning-officer shall keep the key thereof.

153. Immediately after the box shall have been locked, the deputy returning-officer shall, at nine o'clock, precisely, or at seven o'clock precisely in the case of article 149, call upon the electors to vote.

154. It shall be the duty of the deputy returning-officer to facilitate the admission of every elector into the poll, and to see that he is not impeded or molested in or about the poll.

155. The deputy returning-officer only can and shall, when required so to do, sincerely and openly give to an elector the information necessary to show him how to make his mark, but without the slightest indication of preference or suggestion.

156. Each elector, being introduced, one at a time, into the room where the poll is held, shall declare his name, surname and occupation, which shall be at once recorded in a poll-book to be kept for that purpose by the poll-clerk, in the form U.

If such name be found on the list of electors for the voting subdivision of such poll, the number of the ballot given to the elector must be entered in the poll-book.

The voter shall receive from the deputy returning-officer a ballot-

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paper, on the back of which such deputy returning-officer shall have previously put his initials.

157. Nevertheless, any elector so presenting himself, before receiving his ballot-paper, if thereunto required by the deputy returning-officer, the poll-clerk, one of the candidates, or one of their agents, or by any elector present, shall take the following oath or affirmation, and, under such oath or affirmation, answer in the affirmative the question numbers 1, 2, 4 and 11, and in the negative to questions 3, 5, 6, 7, 8, 9 and 10 of the following form :

FORM OF OATH OR AFFIRMATION.

"You swear (*or* affirm, *as the case may be*) to answer the truth and nothing but the truth to the questions which will be put to you ; So help you God :

1. Are you the person meant or intended to be meant by the name entered as follows (*name of the elector entered on the list*) on the list of electors for this polling subdivision ?

2. Are you a subject of His Majesty ?

3. Have you been naturalized in any other country or taken thereto the oath of allegiance ?

4. Are you of the full age of twenty-one years ?

5. Have you voted before to-day at this election for this electoral district, at this or any other poll ?

6. Has any promise been made to you, or to your wife or to any of your relations, friends or other persons, to induce you to vote or not to vote at this election ?

7. Have you received anything, either personally or through your wife or through any member of your family, or, in any other manner, to induce you to vote or not to vote at this election, or in relation to your vote at this election ?

8. Are you acting, have you acted or do you intend to act, in the interest of any candidate at this election, either as paid agent, messenger, employee, carter, or canvasser, with the view of obtaining anything for your trouble, and thereby being influenced in your manner of voting ?

9. Have you been guilty of, or participated in any corrupt practice whatever which disqualifies you from voting at this election ?

10. Have you been remunerated or paid or been promised the payment of anything, or do you expect that you will be paid anything for your having come to vote, or to remunerate you in any way for the services rendered at this election for one of the candidates, except as carter for conveying such candidate or his special agent ?

11. Not being a proprietor and residing in the United States for over a year, have you returned to this country with your family, at least one month before the election, with the intention of remaining therein ?" 59 V., c. 9, s. 157 ; 60 V., c. 21, ss. 28, 29 ; 61 V., c. 13, ss. 1, 2.

158. In cases where it is merely necessary to identify the elector, it will be sufficient, after the oath has been taken, to ask him the first of the questions mentioned in the preceding article.

159. No ballot-paper shall be given to any elector who shall have

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refused to take the oath or affirmation mentioned in article 157 or 158, when thereunto required, or who having taken the same, shall not have answered in the manner prescribed in such articles.

160. Whenever any deputy returning-officer has reason to know or believe that any person presenting himself to vote has already voted at the election and presents himself with the view of voting again, or that such person desires to vote under a false name or designation, or falsely gives himself out or represents himself as entered upon the list of electors, such deputy returning-officer, whether he be required to do so or not, shall administer to such person the oath or affirmation authorized by law, under penalty of a fine of two hundred dollars, and, in default of payment, imprisonment of not more than twelve months; and in that case, mention is made of such formality by adding after the word "sworn" these words: "in virtue of article 160."

161. The elector, on receiving the ballot-paper, shall forthwith proceed into one of the private compartments of the poll, and there shall mark his ballot-paper, marking a cross with a pencil opposite the name of the candidate for whom he intends to vote, after which he shall fold it, so as to hide his vote, and hand it to the deputy returning-officer.

Such officer shall ascertain, by examination of his initials and of the number, without unfolding the same, that such ballot paper is the same supplied by him to the voter, and, after having detached the annex, he shall, immediately, and in the presence of the voter, place the ballot in the ballot-box.

162. The poll-clerk shall enter in the poll-book, opposite the name of each elector presenting himself to vote:

1. The word "voted," as soon as the elector's ballot-paper has been deposited in the ballot-box:

2. The word "sworn" or "affirmed," if the elector has taken the oath or affirmation;

3. The words "refused to be sworn" or "refused to affirm," if the elector has refused to take the oath or affirmation.

163. The deputy returning-officer only, on application of an elector who is unable to read or write, or is incapacitated, by blindness or other physical cause, from voting in the manner prescribed by this act, shall assist such elector:

1. By marking his ballot paper in favor of the candidate indicated by the elector, in the presence of the sworn agent of each candidate or of one of the sworn electors, who represent him, as the case may be;

2. By placing such ballot-paper in the ballot-box.

If there is any doubt as to the alleged incapacity, or if so required, the deputy returning-officer shall, before receiving the vote, require the elector to take an oath or affirmation as to his incapacity according to the following form, to wit:

"I solemnly swear (*or* affirm) that I cannot alone and without assistance make the required mark upon my ballot-paper as I intend to do."

164. Whenever a voter has had his ballot-paper prepared in conformity with the preceding article, mention of the fact shall be made in the poll-book opposite to the name of such voter.

165. Any person who is entitled to vote in the electoral district in

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which the election is being held, and who has been appointed deputy returning-officer, or poll-clerk, or polling-agent of one of the candidates, for a poll other than the one where he is entitled to vote, shall, on request, receive from the returning-officer a certificate showing such right to vote and authorizing him to vote at the poll where he is employed.

On the production of such certificate, such person, if actually and in good faith employed at a poll as deputy returning-officer, poll-clerk or candidate's polling-agent, may vote in the usual manner at such poll, instead of voting at the poll where he would otherwise have been entitled to vote. But the deputy returning-officer cannot, under penalty of a fine of one hundred dollars for each infraction, allow more than two agents for each candidate so to vote, under such certificate, at the poll kept by him.

Mention shall be made in the poll-book, opposite the name of such voter, of the fact of his having voted in virtue of this article under such certificate.

Such certificate is given only upon the written power of attorney of the candidate and forms part thereof, and shall be put with the other election documents.

166. If an elector has inadvertently marked, spoiled or torn the ballot paper given him, in such manner that it cannot be conveniently used, he may, on returning the same to the deputy returning-officer, obtain another ballot-paper ; provided he has not by such means disclosed his vote.

167. If a person, representing himself to be an elector named on the list of electors, applies for a ballot-paper after another person has voted as such elector, the applicant, upon taking the oath or affirmation specified in article 157 or 158, shall be entitled to vote as any other elector.

Mention shall be made in the poll-book of the fact of the voter having voted on a second ballot-paper issued under the same name, and that, on demand, he had taken the required oath or affirmation mentioned in article 157 or 158, and also of any objection made to such vote on behalf of any of the candidates, and of the name of such candidate.

168. Whenever the deputy returning-officer shall not understand the language spoken by any elector claiming to vote, he shall swear an interpreter who shall be the means of communication between him and such elector with reference to all matters required to enable such elector to vote.

169. Every elector shall vote without undue delay, and shall quit the poll as soon as his ballot-paper has been put into the ballot-box. He must be sent away without having voted if he unduly delays in doing so, and his ballot is placed among those to be rejected.

170. No elector shall be allowed to take his ballot-paper out of the poll, under the penalty of being *ipso facto* deprived of his vote at that election, and further incurring a penalty not exceeding two hundred dollars, and imprisonment not exceeding six months in default of payment.

171. No person shall, directly or indirectly, induce any voter to display his ballot-paper after he has marked the same, so as to make

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known the name of the candidate, for or against whom he has so marked his ballot-paper.

An elector who makes known the mark on his ballot *ipso facto* loses his right to vote and to have it deposited in the ballot-box. Such ballot is placed among those to be rejected and note thereof is taken in the poll-book.

172. With the exception of the case provided for in article 163, no person shall interfere with or attempt to interfere with a voter when preparing his ballot-paper, or otherwise make any attempt to obtain information at the poll as to the name of the candidate for whom any voter at such poll is about to vote or has voted, nor watch for or endeavor to discover by looking-glasses or holes or openings in partitions or by any other means, the number of the ballot or the mark of the elector.

173. In case, through accident or irresistible force, riot, removal of documents, or other cause of a similar nature, the nomination could not be had, or the voting could not commence at the hour fixed or was interrupted by similar causes before being closed, the returning-officer and the deputy returning-officer, in so far as it concerns either, shall adjourn to the following day to recommence the operation, and day by day if necessary until the nomination of candidates may be fully held : and, in the case of the polling, it is resumed by commencing at the hour fixed by article 148 and 149, until it has lasted eight hours or ten hours as the case may be, so that all the electors who wish to vote may have had the opportunity of so doing.

174. Every election officer, candidate, agent and elector in attendance in a poll and taking part therein, shall previously take the oath of secrecy in the form V before the deputy returning-officer, if not, they are excluded from the poll. They shall maintain and aid in maintaining the secrecy of the voting at such poll ; and none of such persons shall communicate, before the poll is closed, any information as to whether any person on the list of electors has or has not applied for a ballot-paper or voted at that poll.

175. No election officer, candidate, agent, elector, or other person shall communicate, at any time, to any person, any information obtained in a poll as to the name of the candidate for whom any elector is about to vote or has voted.

176. Whosoever acts in contravention of any of the provisions of articles 171, 172, 174 and 175 shall be liable to a penalty not exceeding two hundred dollars, and imprisonment not exceeding six months in default of payment, or both together, with or without hard labor.

177. Whosoever :

1. Fraudulently puts into any ballot-box any paper other than the ballot-paper which he is authorized by law to put in, or

2. Fraudulently takes out of the poll any one or more ballot-papers, or

3. Attempts to commit any of the acts specified in this article, or

4. Forges, counterfeits, fraudulently alters or defaces or destroys any ballot-paper or the initials of the deputy returning-officer signed thereon, or destroys, takes, opens or manipulates without authority any ballot-box or parcel of ballot-papers in use or having been in use at any

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election, or who, without authority, supplies any ballot-paper to any person or procures the same for himself, in view of the election, or

5. Attempts, assists, provokes, counsels or facilitates the commission of any of the above mentioned offences,

Shall, for each offence, incur :

If an election officer or other person engaged in the election, a penalty of one thousand dollars, and imprisonment for two years in default of payment, or both together, with or without hard labor ; or

If any other person, a penalty of five hundred dollars, and imprisonment for six months in default of payment, or both together, with or without hard labor.

178. No person shall, in any legal proceeding, be required to state for whom he has voted at any election.

179. No elector, summoned as a witness before any judge or tribunal whatever in this Province, shall be compelled to be or appear before such judge or tribunal, on the day during which voting takes place in the electoral district in which such elector is entitled to vote.

180. Masters and employers and all others who have under them employees who are electors and who live in the electoral district in which they are entered, are obliged to allow, without molestation or indemnity, such electors a reasonable time to vote, under a penalty for each refusal of a fine of one hundred dollars and an imprisonment of six months in default of payment.

§ 13. — *Counting the Ballot-Papers.*

181. At five o'clock the poll-house is closed, the polling is closed; an entry thereof is made in the poll-book.

Immediately thereafter, the deputy returning-officer shall, in the voting room and in presence of the poll-clerk, and of the candidates or their agents, or in the absence of any one of the candidates or his agents, in the presence of three electors representing each candidate, open the box containing the ballot-papers, and proceed to count the number of votes given for each candidates.

182. When at the counting of the ballots, it has been established that the number of ballots deposited in the box corresponds with that entered in the poll-book and to the annexes (taking into account the ballots rejected which were not deposited), and that it appears that the ballots are not other than those supplied by the deputy returning-officer, the said deputy returning-officer, if he notices in counting, for the purpose of assigning them to each candidate, that by oversight or forgetfulness he has omitted initialling some or all of the ballots on the back, may then do so in presence of the persons in the poll-house, and at the same time indicate it by a note at the end of his initials—as a correction made—and he makes an entry thereof in the poll-book as prescribed by article 185.

But, before so affixing his initials on the said ballots, the deputy returning-officer must write, sign and attest under oath, before the poll-clerk, the following declaration :

" I swear that, through forgetfulness or oversight, I did not affix my initials on (*state the number*) ballot-papers, which I acknowledge as

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having been supplied by me during the polling and which I have found in the ballot-box. So help me God."
Sworn before me, at
this day of 19 ,

This declaration must be deposited with the other documents in the ballot-box.

Such ballot-papers are then counted as if all formalities had been duly accomplished in respect thereto.

183. The deputy returning-officer, on reading and counting the ballot-papers, shall reject :

1. All ballot-papers which are not similar to those supplied by him:
2. All those by which more than one vote has been given :
3. All those upon which there are any writing or marks, or indications by which the voter could be identified :
4. All those left in blank or null as uncertain ;
5. All other ballot-papers which may have been presented to him and which do not have his initials thereon, saving the case of article 182.

184. After the remaining ballot-papers have been counted and a list made of the number of votes given to each candidate and of the number of ballot-papers rejected, all the ballot-papers indicating the votes assigned to each candidate shall be put into separate envelopes or parcels: those rejected in accordance with article 183; and all the annexes shall also be put into a different envelope or parcel, closed and sealed.

All these parcels, after having been endorsed so as to indicate their contents and initialed, shall be put back into the ballot-box.

185. The deputy returning-officer shall take a note of any objection made by any candidate, his agent or any elector present, to any ballot-paper found in the ballot-box, and shall decide at once any question arising out of the objection.

His decision shall be final, and shall only be reversed on petition questioning the election or return, or on a recount before the judge

Each objection shall be numbered, and a corresponding number placed on the back of the ballot-paper, and initialed by the deputy returning-officer.

An entry at the end of the poll-book is made of each objection and its nature.

186. The deputy returning-officer shall make out a statement indicating the number of the :

1. Accepted ballot-papers ;
2. Votes given to each candidate ;
3. Rejected ballot-papers which cannot be assigned to any candidate:
4. Spoiled and returned ballot-papers ; and
5. Ballot-papers which have not been used and which are returned by him.

This addition is written out at length and in figures at the end of the poll-book, signed by him and his clerk, and by such agents of the candidates who wish to sign it ; a similar one, signed in the same manner, is made, which he deposits in the ballot-box, and another which he keeps, and he delivers gratuitously copies thereof to the of the agents of each

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of the candidates, or to one of the electors representing each candidate who took part in the counting of the ballots and who ask for it.

187. The deputy returning-officer and poll-clerk shall respectively take the oaths according to forms W and WW, each taking the oath proper to him.

The deputy returning-officer may take such oath before the poll-clerk.

Such oaths shall be annexed to the statement mentioned in article 186 and shall be deposited in the ballot-box.

188. He shall also place in the ballot-box all the lists of electors used by him, after having written at the foot of each of such lists a statement certifying the total number of electors who voted on such list.

The poll-book, his commission, that of the poll-clerk, their oaths of office, the unused ballot-papers, and all other lists or documents that may have been used or at such election shall also be placed, by the deputy returning-officer, in the ballot-box.

189. The ballot-box shall then be locked and sealed in the presence of the same witnesses and shall be returned to the returning-officer or to the election clerk.

190. If either of these officers be unable to receive or collect the ballot-boxes, such boxes shall be brought to him in person by the deputy returning-officer or his clerk unless forcibly prevented, in which case they shall be delivered to one or more persons specially appointed for that purpose by the returning-officer.

Such persons, on delivering the ballot-boxes to the returning-officer, shall take the oath given in form X.

191. Every election officer, candidate, agent or elector in attendance at the counting of the votes, shall maintain and aid in maintaining the secrecy of the voting; and none of such persons shall attempt to ascertain, at such counting, the name of the voter whose vote is given by any particular ballot-paper, or communicate to any person whatever any information obtained at such counting in relation thereof.

Whosoever shall act in contravention of any provision of this article shall be punishable by a penalty not exceeding two hundred dollars, and an imprisonment not exceeding six months in default of payment.

§ 14. — *Close of the Election.*

192. The returning-officer, immediately after having received all the ballot-boxes, shall proceed to open them, in the presence of the election clerk and of one other witness, as also in the presence of the candidates or their respective agents who have been notified by registered letter of the day, hour and place, and shall add up and ascertain the number of votes given for each candidate, from the statements found in the several ballot-boxes returned by the deputy returning-officers, and not by any other document, saving the following provisions.

193. If the ballot-boxes, or any of them, have been destroyed or lost or are not forthcoming, the returning-officer shall, without adjourning unless it is from day to day, ascertain, with all possible diligence, the cause of the disappearance of such ballot-boxes, and shall procure from the deputy returning-officer, whose box is missing, or from any person

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having the same, the lists, statements and certificates required by this act, or copies thereof.

Each of such documents shall be verified on oath taken before the returning-officer.

194. If, in the case of the preceding article, the lists, statements or certificates or copies thereof cannot be obtained, the returning-officer shall ascertain, by the best evidence which he may be able to obtain, the total number of votes given to each candidate at the several polls where ballot-boxes or documents are missing.

195. In the case of the two preceding articles, the returning-officer shall state, in his return, the circumstances attending the disappearance of the boxes and documents, and the means adopted by him to establish the number of votes polled for each candidate.

196. The candidate who, on the final summing up of the votes, shall be found to have a majority of votes, shall be then declared and proclaimed elected.

197. When, on the final addition of votes, an equality of votes is found to exist between the candidates, and the addition of a vote would entitle any one of such candidates to be declared elected, it shall be the duty of the returning-officer immediately to give, in presence of the election clerk and of the witness, such additional or, casting vote, by declaring in writing, signed by himself, for whom he votes.

In no other case shall the returning officer have the right to vote.

198. Six days after the final addition of votes, the returning-officer shall transmit to the Clerk of the Crown in Chancery his return, indicating the person elected for the electoral district, provided, however, that he has neither seen nor received the notice from the judge of the recount granted under article 204.

In the case of the preceding article, the returning-officer shall indicate, in his report, the name of the candidate for whom he has given his casting vote.

199. The returning-officer shall accompany his return, to the Clerk of the Crown in Chancery, with a report of his proceedings, in which report, in addition to the statement already required, he shall make any observations he may think proper as to the state of the ballot-boxes or ballot-papers received by him.

200. The returning-officer shall also transmit to the Clerk of the Crown in Chancery, with his return, the writ of election, his oath of office, the commission of the election clerk and the oath of such officer, the original statements mentioned in article 192, together with the ballot-papers, the list of electors used in the several polls, and all other lists or documents used or required at such election, or which may have been transmitted to him by the deputy returning-officers.

201. The various transmissions required under the four preceding articles are sent through the post-office, after being registered, or by express charges paid.

They may also be made personally to the officer entitled to receive them, but without travelling expenses.

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202. After forwarding his return, the returning-officer shall cause the ballot-boxes used at the election to be deposited in the custody of the sheriff of the district or of the registrar of the registration division in which the nomination was held.

If he himself is the sheriff or registrar, he shall keep them in his own possession as such.

203. At the next ensuing election, such ballot-boxes shall be delivered to the returning-officer appointed for such election by the then custodian thereof.

§ 15. — *Recount before a Judge.*

204. In case it be made to appear, within four days after that on which the returning-officer has made the final addition of the votes for the purpose of declaring the candidate elected, upon petition, based on the affidavit of any credible witness, to a judge of the Superior Court ordinarily discharging his duties in any judicial district in which the electoral district or any part thereof is situated, or in his absence to any election in such electoral district, in counting the votes, has unduly admitted, improperly counted or rejected any ballot-paper at such election, or that the deputy returning-officer has improperly summed up the votes, and that a recount will change the result of such election, and

2. In case the applicant deposits, within the same time, with the clerk of the court, the sum of fifty dollars, as security, in respect of the recount, for the costs of the candidate appearing by the addition to be elected, the said judge shall appoint a time, within four days after the receipt of the said affidavit by him, to recount the votes, or to make the final addition as the case may be.

205. The judge shall himself, immediately, give notice in writing, served in the usual manner, or forwarded by registered letter, or by telegram if necessary, to the candidates, or their special agents, of the day, hour and place at which he will proceed to recount the votes, or to make such final addition, as the case may be, and shall summon, and command, in any of the above manners, the returning-officer and his election clerk and order them to attend then and there with the parcels containing the ballots used at the election ; which command the returning-officer and his election clerk shall obey, the whole in the most expeditious manner, so as in any event to hold the recount.

206. The judge, the returning-officer and his election clerk, and each candidate and agent authorized to attend such recount of votes, or, in case any candidate cannot attend, then not more than one agent of such candidate, and, if the candidates and their agents are absent, then at least three electors, shall be present at such recount of the votes.

207. At the time and place fixed, the judge recounts all the ballot-papers returned by the several deputy returning-officers, and, in the persence of the aforesaid persons, if they attend, opens the sealed packets containing :

1. The used ballot-papers which have been assigned to each candidate ;

2. The rejected ballot-papers ;

3. The spoiled ballot-papers, but no other ballot-papers ; commencing and proceeding in alphabetical or numerical order of the polls.

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208. The judge shall, as far as practicable, proceed continuously, except on Sundays and other non-juridical days, with such recount of the votes, allowing only time for refreshments, and excluding (except so far as he and the aforesaid persons agree) the hours between six o'clock in the evening and nine on the succeeding morning.

During the excluded time and recess for refreshments, the said judge shall place the ballot-papers and other documents relating to the election in a sealed envelope, under his own seal and the seals of those of the other persons who desire to affix their seals, and shall otherwise take the precautions necessary for the security of such ballot-papers and documents.

209. The judge shall proceed to recount the votes according to the rules set forth in article 181, and shall verify or correct the count of the ballot-papers and statements of the number of votes given for each candidate, by deciding the objections without delay, and as they are made.

Upon the completion of such recount, or so soon as he has thus ascertained the true result of the poll, he shall seal up all the said ballot-papers in separate packets, and shall forthwith certify the result to the returning-officer, who shall then proclaim elected the candidate having the highest number of votes.

In case of an equality of votes, the returning-officer shall give the casting vote, in like manner as provided in article 197.

210. The returning officer, after the receipt of a notice from the judge of such recount of ballots, shall delay making his return to the Clerk of the Crown in Chancery, until he receives a certificate from the judge of the result of such recount, and, upon receipt of such certificate, the returning-officer shall proceed to make his return, without delay, in the form Y.

In cases where such return has been made before the time fixed for the recount, the returning-officer is bound, on the same order from the judge, to procure, from the Clerk of the Cown in Chancery, the required documents, and produce them at the time fixed under pain of contempt of court against them.

211. The returning-officer shall, without delay, transmit a copy of his report to each candidate, and further, to the candidate elect, a certificate of election in form Y.

212. In case the recount or addition does not so alter the result of the poll as to affect the election, the judge shall order the costs of the candidate appearing to be elected to be paid by the applicant; and the deposit shall be paid over to the said candidate, on account thereof, so far as necessary, and the judge shall tap the costs on giving his decision; — if the deposit be insufficient, the party in whose favor costs are allowed shall have his right of execution for the balance.

§ 16. — *Miscellaneous.*

213. The Clerk of the Crown in Chancery shall, on receiving the return of any member elected to the Legislative Assembly, publish in the ordinary issue of the *Quebec Official Gazette*, the name of the candidate elect.

214. The Clerk of the Crown in Chancery shall retain in his possession all the papers transmitted to him by any returning-officer, for at

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least one year, if the election or return be not contested during that time, and, if the election or return be contested, then for at least one year after the termination of such contestation.

215. He shall deliver, on application to that end and on payment of a fee of ten cents per hundred words, certified copies of all writs, poll-books, reports, returns or other documents in his possession concerning any election, except of ballot-papers.

Each copy thus certified shall be *primâ facie* proof before every judge, election court, and tribunal in the Province .

216. No person shall be allowed to inspect any ballot-papers in the custody of the Clerk of the Crown in Chancery, or to obtain the production thereof, except under a rule or order of the Superior Court or a judge thereof, and under the conditions imposed by him.

Such rule or order shall be granted by such court or judge, upon evidence under oath, that the inspection or production of such ballot-papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to such ballot-papers, or for the purpose of preparing or sustaining a petition questioning an election or return.

Any order, for the inspection or production of ballot-papers may be made subject to such conditions as to persons, time, place and mode of inspection or production, as the court or judge may think expedient, and the candidates shall be notified of the day and hour fixed for the examination.

Each such rule or order shall be final and without appeal, and shall be obeyed by the Clerk of the Crown in Chancery, under pain of punishment for contempt of court.

217. The Clerk of the Crown in Chancery may, when required to forward documents or papers, send the same by express, charges paid.

218. The property of the ballot-boxes, ballot-papers, and instruments used in marking ballot-papers, procured for or used at any election, shall be in Her Majesty.

219. Any person, producing to the returning-officer or deputy returning-officer, at any time, a written authority from a candidate to represent him at the election or at any proceeding of the election, shall be deemed an agent of such candidate within the meaning of this act.

220. A candidate may himself undertake the duties which any of his agents, if appointed, might have undertaken, or may assist his agent in the performance of such duties.

He may be present at any places in which the presence of his agent is authorized by this act.

221. Where, in this act, any provision requires or authorizes any act to be done, or implies thant any act is to be done, in the presence of the agents of the candidates, such provision shall be deemed to refer to such agents of the candidates as may be authorized to attend, and who have, in fact, attended at the time and place where such act was done.

The non-attendance of the agents shall not, if the act or thing be otherwise duly done, invalidate the same.

222. No election shall be declared invalid by reason of :

1. Non-compliance with the formalities contained in this act, as to

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the proceedings of the voting or the counting or summing up of the votes ; or

2. Any mistake in the use of the forms annexed to this act :

If it appears to the tribunal, having cognizance of the question, that the election was conducted in accordance with the principles laid down in this act, and that such non-compliance or mistake did not affect the result of the election.

§ 17. — *Provisions applicable to the various Election Officers.*

223. No person, who has been nominated as a candidate at an election, shall be afterwards appointed an election officer for such election.

224. No person, who is, by articles 81 and 223, declared to be ineligible to act as returning-officer, election clerk, deputy returning-officer or poll-clerk, shall, in any case, act in any such capacity, under a penalty of one hundred dollars, and imprisonment for three months in default of payment.

225. None of the following persons, unless they are sheriffs, prothonotaries, or registrars, shall be obliged to act in the capacity of returning-officer, election clerk, deputy returning-officer or poll-clerk :

1. The professors of any university, college, seminary, lyceum or academy ;

2. Physicians, surgeons or dentists ;

3. Millers ;

4. Postmasters, custom-house officers or employees in the post-offices or custom-houses ;

5. Persons aged sixty years or over ;

6. Persons who have already served as returning-officers in the preceding election.

226. No person shall be obliged to act as deputy returning-officer or poll-clerk in any municipality in which he is not domiciled.

227. Any person, even the sheriff, prothonotary or registrar, who intends to come forward as a candidate at an election, shall be exempt from acting as returning-officer, election clerk, deputy returning-officer or poll-clerk, at such election.

228. Whoever is entitled to claim the exemption granted by either of articles 225, 226 and 227, shall claim such exemption within the two days after receipt of the writ of election or commission, as the case may be, by a letter setting forth the reasons for his claim, addressed to the officer who has given the commission, or transmitted the writ of election.

In default of so doing, he shall be debarred from claiming such exemption, and be subject to the penalties prescribed for his refusal to accept.

229. Any person, being competent to discharge the office of returning-officer, election clerk, deputy returning-officer or poll-clerk, shall, unless he is exempt and has claimed exemption within the prescribed delays, be obliged to accept such office, under a penalty of two hundred dollars, and of imprisonment for six months in default of payment.

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230. Any returning-officer, election clerk, deputy-returning-officer or poll clerk, who refuses or neglects to perform any of the obligations or formalities required of him by this act, shall, for each such refusal or neglect be liable to a penalty of two hundred dollars, and imprisonment for six months in default of payment, except in the cases otherwise provided for.

231. The returning-officer, at any election, shall have the power of administering all oaths or affirmations required by this act, with respect to such election.

Every deputy returning-officer shall also have the power of administering such oaths and affirmations.

232. No returning-officer, or deputy returning-officer, or partner or clerk of either shall act as agent of any candidate in the organization or management of his election for such electoral district, under a penalty of two hundred dollars, and imprisonment for six months in default of payment.

233. Every returning-officer, who wilfully delays, neglects or refuses to declare and proclaim elected any person by law entitled to be declared and proclaimed elected a member of the Legislative Assembly for any electoral district, is subject to a penalty of one thousand dollars; the recourse at law against such returning-officer for all damages sustained by such person by reason thereof being reserved to such person, in case it has been determined, on the hearing of an election petition, respecting the election for such electoral district, that such person was entitled to have been declared and proclaimed elected.

Whoever aids, counsels or solicits the commission of any such offence or becomes an accomplice, is liable to a similar fine.

The action, however, for the recovery of such damages and fine must be commenced within one year after the commission of the act on which it is grounded, or within six months after the conclusion of the proceedings relating to the contestation of the election, otherwise the same shall be barred.

§ 18. — *Maintenance of Peace and Good Order.*

234. Every returning-officer, and every deputy returning-officer, from the time they shall respectively have taken the oath of office until the day after the closing of the voting, shall be conservators of the peace, and be invested with all the powers appertaining to a justice of the peace.

They are empowered and bound to maintain peace and good order throughout the electoral district during the election.

235. The returning-officer, or deputy returning-officer may require the assistance of all justices of the peace, constables or other persons present, to aid him in maintaining peace and good order at such election; he may also, on a requisition made in writing by any candidate, or by his agent, or by any two electors, swear in such special constables as he deems necessary.

236. The returning-officer, or deputy returning-officer may arrest, or cause to be arrested, by verbal order, and placed in the custody of any constables or other persons, any person disturbing the peace and good

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order at the election, or may cause such persons to be imprisoned, under an order signed by him, until any period not later than the close of the voting.

237. The returning-officer, or deputy returning-officer may, during the nomination day and polling day, require any person, within half a mile of the place of nomination or of the poll, to deliver to him any weapon, fire-arm, sword, staff, bludgeon or other offensive weapon in the hand or possession of such person.

Every person refusing to deliver such weapons shall be liable to a penalty of one hundred dollars, or imprisonment for three months in default of payment, and, if there is any danger of their being used to disturb the election, such person may be arrested and treated in accordance with the preceding article.

238. No person, who is not domiciled within the limits of a voting subdivision or ward of a city, shall be permitted to enter such voting subdivision or ward, during the voting in such subdivision or ward, with any kind of offensive weapons whatsoever, such as fire-arms, swords, staves, bludgeons or other similar weapons.

239. All persons are alike forbidden, within the voting subdivision or ward, to arm themselves during the day of voting with any offensive weapon, and thus armed to approach within a distance of one mile of the place where a poll is being held unless called upon to do so by lawful authority.

240. The prohibitions mentioned in articles 238 and 239 shall not apply to the returning-officer, or to the election clerk, or to the deputy returning-officer or poll-clerk, or to the constable or special constables at any election.

241. No candidate or other person shall furnish or give to any person whomsoever any flag, standard, banner, distinctive color, ribbon, signal, cockade, or anything of such nature, to the end that the same may be carried or used within the electoral district, between the eighth day before the nomination day and the day following the close of the voting, as a banner or party signal, distinguishing the bearer or his followers as partisans of such candidate, or holding the same opinions or the opinions supposed to be held by such candidate.

242. No person, upon any pretense whatever, shall carry any flag, standard, ensign, banner, distinctive colors, ribbon, signal, cockade, or any other similar thing, nor shall the same be used as a banner or party sign within the limits of such electoral district, from the day of nomination until the day after the close of the voting.

243. No candidate shall, at any election, nor shall any other person, at the expense of such candidate, provide or furnish drink, or other refreshments or meal, to any elector, during such election, or pay for, procure or engage to pay for any such drink or other refreshments or meal.

244. Every person offending against any of the provisions of articles 238, 239, 240, 241, 242 and 243 shall incur a fine not exceeding two hundred dollars, and imprisonment not exceeding six months in default of payment, or both together.

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245. Every bar in a hotel or club, every hotel, tavern, shop or store, whether licensed or not, in which spirituous or fermented liquors or drinks are ordinarily sold, shall be closed during the day of voting in the voting subdivisions or wards of a city in which the polls are situated, under a penalty of two hundred dollars, and imprisonment for six months in default of payment.

No spirituous or fermented liquors or drinks shall be sold or given to any person whomsoever, within the limits of a voting subdivision or ward of a city during the said period, under a penalty of two hundred dollars, and imprisonment for six months in default of payment.

246. On the day of the polling in cities, and on the day of the polling and the previous day everywhere else it is prohibited within the limit of an electoral district where an election is held, under penalty of imprisonment of one month at least and six months at most, either to sell for a price in money or in exchange for any article whatever, or lend or dever, or gratuitously supply any quantity whatever of spirituous or fermented liquor; the only exception to this provision, the burden of proof whereof is upon the accused, is established in favor of the sick, in which case the liquor can only be sold, lent, delivered or supplied upon the certificate of a priest or minister of some religious denomination, or of a doctor; and whoever shall give or deliver a false certificate in respect thereof shall be liable to a fine of one hundred dollars, and, in default of payment, to imprisonment of one month.

247. During the days mentioned in article 246, and under the same penalties, but subject to the same exceptions in case of sickness, it is forbidden to cause to be brought or transported, or to bring or transport, within the limits of the electoral district within which an election is held, or from one place to another within the said limits, any quantity whatever of spirituous or fermented liquor.

This provision shall not affect the sale, transport, delivery or purchase of spirituous or fermented liquor, made in good faith and in the ordinary course of affairs by a merchant or trader; provided that the cases, casks, bottles or envelopes containing the said liquor be not open, broken or unclosed during the days above mentioned.

248. During the days mentioned in articles 246 and 247, whoever is found under the influence of liquor and consequently disturbing public order in or on any street, lane, road, by-road, or public square, or in any hotel, restaurant, tavern or place of public resort whatever, within the limits of an electoral district in which an election is held is liable to an imprisonment of thirty days at most.

249. It is prohibited to lease or let, as a place of assembly for an election committee or election meeting, any house, part of a house or place in which are retailed spirituous or fermeted liquors, or in which food is ordinarily supplied for payment, or to make use of any such places for that purpose, under penalty of a fine of one hundred dollars, and of an imprisonment of three months in default of payment.

250. Each candidate can have only one place paid for in each polling subdivision for his election committees, under penalty of a fine of one hundred dollars and of imprisonment of three months in default of payment.

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SECTION IV.

SPECIAL PROVISIONS FOR GASPE WHEN NAVIGATION IS CLOSED.

251. In the case of an election for the electoral district of Gaspé, if the returning-officer cannot, owing to the close of navigation, communicate with the Magdalen Islands, except by telegraph, the following provisions apply :

1. The returning-officer appoints, by telegraph, the registrar for the registration division of the Magdalen Islands or the deputy sheriff of the Islands to be election clerk therein.

If such registrar and deputy sheriff are unable to act, or if they have a right to claim and claim exemption, the returning-officer may appoint any other person to perform the duties.

If the returning-officer becomes unable to act, he is replaced by his election clerk for the mainland.

2. The returning-officer transmits by telegraph to the election clerk for the Magdalen Islands the proclamation announcing the election.

After being sworn according to law, the election clerk signs the proclamation and causes it to be posted in the different municipalities of the Islands, according to law.

3. Any candidate nominated for the electoral district of Gaspé may, if at the time he is at the Magdalen Islands and cannot otherwise give his consent, accept the nomination by telegraphing such acceptance to the returning-officer.

4. If there is more than one candidate nominated, and voting becomes necessary, the returning-officer transmits by telegraph to his election clerk in the Islands the notice of voting and other instructions.

5. The election clerk for the Magdalen Islands appoints the deputy returning-officers for such Islands.

He himself writes out and makes the ballot-papers according to the instructions of the returning-officers, and distributes them to the deputy returning-officers.

It is the duty of such election clerk, to procure the list of electors for the Islands, or certified copies or extracts therefrom, in the same manner as the returning-officer : to supply each deputy returning-officer with the list, or a copy of or extract from the list containing the names of the electors having a right to vote at the poll for which he is appointed : to deliver to each such deputy returning-officer a ballot-box according to law, and to otherwise fulfil all the duties imposed by law upon the returning-officer respecting the voting.

6. The deputy returning-officers in these Islands, in addition to the ordinary duties of such office which they are obliged to perform, shall forward to the election clerk of these Islands their ballot-boxes after the voting; the latter swears the messengers if the deputy returning-officer cannot themselves go to him.

7. The election clerk of these Islands opens the ballot-boxes on the day fixed by the returning-officer and ascertains the number of votes given according to the statements which he finds therein.

He transmits by telegraph to the returning-officer a certificate, and sends him by the first mail, after the opening of navigation, his written report, with the contents of the boxes, the proclamations, notices of polling, his oath of office, the lists of electors used at the various polls, and all documents used or required at the election or which may have been remitted to him by the deputy returning-officers.

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8. After receiving by telegraph the certificate from the election clerk of the Magdalen Islands, the returning-officer must add the number of votes givent in the Islands for each candidate to those given on the mainland, and deliver to the person who has the greater number of votes a certificate to that effect; the returning-officer must, otherwise, conform to the provisions of the law in this respect.

9. Every returning-officer or election clerk who refuses or neglects to perform any of the obligations or formalities required by the eight preceding paragraphs, incurs, for each such refusal or neglect, in addition to any other penalty imposed by this act a fine of two thousand dollars, and in default of payment an imprisonment of one year.

10. Within eight days next after the publication in the *Quebec Official Gazette* of the receipt by the returning-officer of the written report of the election clerk of the Magdalen Islands, a recount before a judge may be demanded according to law.

11. Such notice of the receipt of the written report of the election clerks of the Islands must be published by the returning-officer in the *Quebec Official Gazette* immediately upon its receipt, under penalty of a fine of five hundred dollars, and, in default of payment, of an imprisonment of three months.

12. The candidate, who is the holder of the certificate of the returning-officer mentioned in the above paragraph 8, declaring that he has the majority of votes, may, on producing such certificate, and awaiting the final return of the returning-officer, take his seat in the Legislative Assembly if it is in session at the time.

13. The delay of thirty days to contest such election shall only commence to run from the day of the publication in the *Quebec Official Gazette* by the Clerk of the Crown in Chancery, of the notice of the election in conformity with the law, but nothing prevents contesting the same as soon as the candidate is declared elected.

14. All the other provisions of the law not incompatible with those of this section apply to such election.

SECTION V

CORRUPT PRACTICES, BRIBERY AND ELECTION EXPENSES.

§ 1.—*Corrupt Practices and Bribery.*

252. Any act or offence punishable under any of the provisions of articles 253, 255, 256, 257, 258, 259, 260, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 273, 275, 279, 289, 296, 297 and 305, also the payment of money or other valuable consideration, made to any person, to engage him to work, or for working or for having worked as a canvasser, shall be a corrupt practice within the meaning of this act and of the third chapter of title second of the Revised Statutes respecting controverted elections of members of the Legislative Assembly of Quebec.

253. Every person shall be deemed guilty of bribery and shall be punishable accordingly :

(*a*) Who, directly or indirectly, by himself or by any other person on his behalf, gives, lends or agrees to give or lend, or offers or promises, any money or valuable consideration or promises to procure, or endeavors to procure any money or valuable consideration to or for any elector, or to or for any person on behalf of any elector, or to or for any person, in

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order to induce any elector to vote or to refrain from voting, or corruptly does any such act as aforesaid on account of such elector having voted or refrained from voting at any election ;

(*b*). Who, directly, or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers or promises any office, place or employment, or endeavors to procure any office, place or employment, to or for any elector, or to or for any other person in order to induce such elector to vote or to refrain from voting, or corruptly does any such act as aforesaid, on account of any elector having voted or refrained from voting at any election ;

(*c*). Who, directly or indirectly, by himself, or by any other person on his behalf, makes any gift, loan, offer, promise, procurement or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavor to procure the return of any person to serve in the Legislative Assembly, or to vote in his favor of any elector at any election ;

(*d*). Who, upon or in consequence of any such gift, loan, offer, promises, procurement or agreement, procures or promises, or endeavors to procure the return of any candidate to the Legislative Assembly, or the vote in his favor of an elector at any election ;

(*e*). Who advances or pays, or causes to be paid any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery or corrupt practices, at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery or corrupt practices at any election and prohibited by law at any election.

2. Whoever immediately previous to and during an election and by reason thereof, with a view of promoting and securing votes, or of interfering with the freedom and sincerity of the votes of the electors or the electorate, causes temporary work to be performed by paid electors whom he employs, is guilty of corrupt practice and liable to a fine of four hundred dollars, and an imprisonment of six months in default of payment.

Every elector who participates in such work becomes incapable *ipso facto* of voting at that election.

254. Nevertheless, the actual personal expenses of any candidate, his expenses for professional services really rendered, and reasonable sums paid in good faith for the actual value of necessary printing and advertisements, the expenses for stationery, postages, telegrams ; those for a clerk, writer, copyist, driver employed by him, and the petty necessary disbursements made in cash of all of which he daily keeps an account as prescribed by article 295, shall be deemed to be expenses lawfully incurred, the payment whereof shall not constitute a breach of this act ; provided always that they are not made with any corrupt intention respecting the election.

255. Every person shall be deemed guilty of bribery and shall be punishable accordingly :

1. Who, being an elector or voter, before or during any election, directly or indirectly, by himself or by any other person on his behalf, takes, receives, agrees or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election.

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2. Who after any election, directly or indirectly, himself or by any other person on his behalf, takes or receives any money, gift, loan, or valuable consideration, office, place or employment, for having voted or refrained from voting, or having induced any other person to vote or to refrain from voting at any election.

256. Every person shall be deemed guilty of bribery and shall be punishable accordingly :

Who, to induce a person to allow himself to be nominated as a candidate, or to refrain from becoming a candidate, or to withdraw, if he has so become :

1. Shall give or lend money or any valuable consideration whatever, or shall agree to give or lend, or shall offer or promise, or shall promise or try to procure for such person or for any other person, any money or valuable consideration whatever, or

2. Shall give or procure any office, place or employment or shall agree to give or procure, or shall offer or promise, or shall promise to procure or endeavor to procure such office, place or employment for such or any other person.

257. Whosoever, in consideration of any gift, loan, offer, promise or agreement, as mentioned in the preceding article, shall allow himself to be nominated, or refuse to allow himself to be so nominated, or shall agree not to allow himself to be nominated, or shall withdraw if he has been so nominated, shall be deemed guilty of bribery and be punishable accordingly.

258. Any candidate or his agent who takes any bet or wager concerning or in relation to any election, with a qualified elector shall, as shall also such elector, and any other person who furnishes money for such purpose, be deemed guilty of bribery, and shall be punishable accordingly.

259. Any person guilty of any of the acts of bribery mentioned in articles 253, 255, 256, 257 and 258, shall be liable to a penalty of not less than two hundred dollars nor more than four hundred dollars, and imprisonment for not less than six months nor more than twelve months, with or without hard labor, and also an imprisonment of six months in default of payment.

260. Every candidate, who, corruptly, by himself or by or with any person, or by any other ways or means on his behalf at any time, either before, during or after any election, directly or indirectly, gives or provides, or causes to be given or provided, or is accessory to the giving or providing, or pays, wholly or in part, any expenses incurred for any meat, drink, refreshments or provisions to or for any person, whether an elector or not, in order to be elected or for being elected, or for the purpose of corruptly influencing such person or any other person, to give or refrain from giving vote at such election, shall be deemed guilty of the offense of treating, and shall be liable to imprisonment for one month at most and a penalty of two hundred dollars, and imprisonment for six other months in default of payment, in addition to any other penalty to which he is liable under any other provision of this act.

261. Every elector, who, with a corrupt motive, accepts or takes any such meat, drinks, refreshments or provisions, is also guilty of the

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offence of treating, and is liable to a fine not exceeding fifty dollars and or without hard labor, and also an imprisonment of six months in default of payment.

262. The giving or causing to be given, to any elector on the nomination day, the day of voting or on the next following day, on account of such elector having voted or being about to vote, any meat, drink or refreshments, or any money or ticket to enable such elector to procure refreshments, shall be deemed an act of corruption known as "treating".

Whosoever shall have been guilty of such act of treating shall, for each offence, be liable to a penalty of ten dollars, and imprisonment of one month in default of payment, for each time and for each elector treated, in addition to the other penalties enacted by this act.

263. On the trial of an election petition, there shall be struck off from the number of votes given for such candidate, one vote for every person who shall have so voted, and is proved on such trial to have corruptly accepted or taken any such meat, drink, refreshments or provisions.

264. Every elector who accepts or takes, during the prohibited time, any such meat, drinks, refreshments or provisions, or any money or note to enable him to obtain the same, because he is about to vote or has voted, is guilty of the offence of treating, and is liable to a fine of ten dollars, and imprisonment for one month in default of payment, for each time he was so treated.

The penalty is double if the offence is committed at a meeting of electors and before it has dispersed subject always to all other penalties enacted by this act.

265. Every person, who, corruptly, by himself or by or with any person, or by any other way or means in the interest of any candidate at any time, either before, during or after any election, directly or indirectly, gives or provides, or causes to be given or provided, or is accessory to the giving or providing, or pays, wholly or in part, any expenses incurred for any meat, drinks, refreshments or provisions to or for any person, for the purpose of aiding any candidate to be elected, or because any such candidate was elected, or for the purpose of corruptly influencing such person or any other person, to give or abstain from giving his vote at such election, shall be deemed guilty of the offence of treating, and shall be liable to a fine of two hundred dollars, and an imprisonment of six months in default of payment, or both together, with or without hard labor, in addition to all other penalties enacted by this act.

However, nothing contained in the five preceding articles shall prevent any person from receiving in his own house, at his table, in the usual manner, and at his own expense, such electors as he invites to his house.

266. Every person shall be deemed to be guilty of the offence of "undue influence," and shall be punishable accordingly by a penalty of two hundred dollars, and imprisonment for six months in default of payment, and of imprisonment for six other months in addition in the discretion of the court, with or without hard labor:

1. Who, directly or indirectly, by himself or by any other person on his behalf, make use of, or threatens to make use of any force, violence or restraint, or inflicts, or threatens the infliction by himself or by or through any other person of any injury, damage or harm to his person

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or property, or loss of employment, or in any manner practises intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election ;

2. Who, by abduction, duress, artifice, false information, or any fraudulent device or contrivance, impedes, prevents, or otherwise interferes with the free exercise of the franchise of any elector, or thereby compels, induces or prevails upon any elector either to give or refrain from giving his vote at any election or prevents him from going to vote.

267. Every person, who directly, or indirectly or in any manner, induces or constrains, or attempts to induce or constrain any one to take a false oath, in any matter in which an oath is required in virtue of the present act, shall for the purpose of this act, over and above any other punishment to which he may be liable for such offence, be liable to a fine of two hundred dollars, and an imprisonment of six months in default of payment, and to another imprisonment for six months in the discretion of the court, with or without hard labor.

Every person who agrees to take or takes any false oath is liable to the same fine and penalty, in addition to any other penalty to which he is exposed for such offence.

268. Every person shall be deemed to be guilty of the offence of "personation," and shall be punishable accordingly by a penalty of five hundred dollars and imprisonment for six months in default of payment, in addition to an imprisonment not exceeding six months, with or without hard labor ;

1. Who, during the voting at an election, applies for a ballot-paper, or presents himself to vote, in the name of some other person, whether such name be that of a living, dead, or fictitious person ;

2. Who, having already voted at an election, applies during the same election for another ballot-paper in his own name or presents himself again to vote at the same or any other poll-house ;

3. Who aids, abets, incites, counsels or facilitates the commission, by any person whomsoever, of any infraction of the provisions of this article.

269. All placards, posters, publications and printed matter whatever, placarded, posted or distributed during an election and having reference thereto, shall visibly bear upon the face thereof the name and address of the printer and publisher thereof ; and whoever prints, publishes, posts or distributes them without such name and address as aforesaid, is if a candidate or one of his agents, guilty of a corrupt practice, and, if another person, incurs a fine not exceeding four hundred dollars, and an imprisonment not exceeding three months in default of payment.

270. The hiring or promising to pay or paying for any horse, team, carriage, cab or other vehicle, by any candidate or by other person on his behalf, to convey electors to or from the poll, or to or from the neighborhood thereof, at any election, or the payment by any candidate, or by any person on his behalf, of the travelling and other expenses of any elector, in going to or returning from any election, are unlawful acts.

Whosoever so offends shall be liable to a fine of one hundred dollars, and imprisonment for three months in default of payment.

271. Whosoever lets or takes to hire any horse, cab, cart, waggon,

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sleigh, carriage or other conveyance for any candidate or for any agent of a candidate, for the purpose of conveying electors to or from the polls shall, for every such offence, be liable to a penalty of one hundred dollars, and imprisonment for three months in default of payment.

272. Every elector who, at any election, shall have been guilty of any corrupt practice, prohibited by this act, or who shall have a party to the commission of such act, shall, *ipso facto*, be deprived of his right to vote at such election.

273. Every person who votes, or induces and causes any other person to vote at any election, knowing that he or such person is not entitled to vote thereat, is guilty of a corrupt practice and liable to a fine of one hundred dollars, and an imprisonment of one month in default of payment, with, in addition, an imprisonment not exceeding one month with or without hard labor.

274. At the trial of any election petition, one vote for each person proved to have voted, after having been guilty of any corrupt practice at the instigation of the candidate, of any of his agents, or of any other person acting in the name or in the interest of such candidate, shall be struck from the number of votes given in favor of such candidate.

275. Any person who, before or during any election, knowingly publishes any false rumor or false statement of the withdrawal of a candidate at such election, for the purpose of promoting and procuring the election of another candidate, is guilty of a corrupt practice within the meaning of this act.

Nevertheless, a candidate shall not be liable for any corrupt practice provided for under this article, committed by any agent other than his special agent, nor shall his election be avoided unless it has evidently changed the result of the election and fraudulently deceived the electorate.

276. Every contract, promise or undertaking, in any way referring to, arising out of, or depending upon any election under this act, even for the payment of lawful expenses, or the doing of some lawful act, shall be void in law, and no action shall lie even for the recovery of the value of any supplies or services whatever.

This provision shall not, however, enable any person to recover back any money or other consideration paid for lawful expenses connected with such election.

277. If it is proved before any court, or judge, for the trial of election petitions, that any corrupt practice has been committed, by or with the actual knowledge and consent of any candidate at an election, his election, if he has been elected, shall be void.

Such candidate shall, during the five years next after the date of such decision, be incapable of being elected to, or of sitting in the Legislative Assembly, or of voting at any election of a member of that House, or of holding an office in the nomination of the Crown, or of the Lieutenant-Governor in the Province.

Further he is liable, at the suit of the Crown, to reimburse it for the costs occasioned and the expenses incurred for such election so set aside.

278. If it appears to the said court that the act committed by such candidate or with his knowledge and consent, and which is under the

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letter of the law a corrupt practice, was so committed through ignorance or inadvertance, without any corrupt intent, involuntarily and was excusable, and the offence or offences are of no great gravity and could not have affected the result of the election, and that it is proved that the candidate had, in good faith, as far as possible, taken all reasonable precautions to honestly carry out the election according to the prescription of the law, such candidate shall not be liable to any of the penalties enacted by article 277.

279. No person has any right to vote nor shall he vote more than once in the same electoral district.

Every elector who voluntarily presents himself more than once to vote, or who votes more than once at an election, is guilty of a corrupt practice, and is liable, for each offence, to a fine of two hundred dollars, and imprisonment for six months in default of payment, and further an imprisonment of not more than six months, with or without hard labor.

Every person who aids or counsels or procures the commission of the said offence, or is an abettor or accomplice therein, is guilty of a corrupt practice, and is liable for each offence to the same fine and penalty.

280. If it is found, by the report of any court or judge for the trial of election petitions, that any corrupt practice has been committed by any one or more of the agents of any candidate at an election, whether with or without the actual knowledge and consent of such candidate, the election of such candidate, if he has been elected, shall be void.

281. If, on the trial of any election petition, any candidate is proved to have personally engaged, at the election to which such petition relates, as a canvasser or agent in relation to the election, any person, knowing that such person has, within three years previous to such engagement, been found, in virtue of the provisions of this act, or of any other act, whether provincial or federal, respecting representative elections, guilty of any corrupt practice, by any competent legal tribunal, or by the report of any judge or other tribunal for the trial of election petitions, the election of such candidate, if he has been elected, shall be void.

282. Any person, other than a candidate, found, in virtue of the provisions of this act, guilty before a competent court, of any corrupt practice in any legal proceeding in which, after notice of the charges, he has had an opportunity of being heard, shall, during the five years next after the time when he is so found guilty, be incapable of being elected to and of sitting in the Legislative Assembly, and of voting at any election of a member of such House, or of holding any office in the nomination of the Crown, or of the Lieutenant Governor in the Province, or any municipal office.

283. If, at any time, after any person has become disqualified under any of the provisions of articles 277, 280, 281 or 282, the witnesses, or any of them, on whose testimony such person has so become disqualified, are convicted of perjury in respect of such testimony, such person may obtain from the court before which such conviction took place an order determining that such disqualification shall cease and end.

Such court shall, upon being satisfied that such disqualification would not have been declared except for such perjury, make such order.

In pursuance of such order, such disqualification shall thenceforth cease and end.

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284. Whenever it apears to the court or judge, trying an election petition, that any person has contravened any of the provisions of this act, such court or judge shall order that such person be summoned to appear before such court or judge, at the place, day and hour fixed in the summons for hearing the charge.

The summons is effected by a notice signed by the judge containing a summary statement of the offence, with an indication of the circumstances of time, place and person and served upon the accused by a bailiff. The delay upon the summons is the same as in an action before the Circuit Court.

285. If, at the time fixed by the summons, the person summoned does not appear, he shall be condemned, on the evidence already adduced on the trial of the election petition, to pay such fine or undergo such imprisonment in default of payment to which he may be liable for such contravention, in conformity with article 323.

286. If, on the contrary, the person so summoned does appear, the court, after hearing such person and such evidence as may be adduced, shall give judgment according to law.

The proceedings upon the hearing of the complaint are summary and made within the delays to plead and hear the witnesses as fixed by the court or judge.

287. All fines recovered under articles 284, 285 and 286 belong to Her Majesty.

288. No fine shall be imposed under articles 285 and 286 :

If it appears to the judge or court that the offender has already been sued for the same offence ; or

2. If the evidence or admission of the offender is the only proof of the offence.

§ 2. — *Election expenses.*

289. Except in respect of the deposit required by law and the personal expenses of a candidate at an election, as defined by paragraph 2 or article 2, and article 254, and saving the payments specifically allowed by this act, no payment, loan, subscription, note, check, security or deposit whatever, shall be made by or on behalf of such candidate at any election, on account of such election, before or during or after such election, otherwise than through a special agent, whose name, occupation, domicile and address have been declared in writing given to the returning-officer on or before the nomination day, or through the special agent appointed in his place, as provided by article 291.

Any person making any such payment, loan, subscription, note, check, security or deposit whatever, otherwise than through the special agent appointed under this article or under article 291, is deemed guilty of a corrupt practice and shall incur a penalty of four hundred dollars, and imprisonment for six months in default of payment, and in addition an imprisonment not to exceed six months, with or without hard labor.

290. It is the duty of the returning-officer to publish, on or before the nomination day, the name, occupations, domicile, and address of the special agent, appointed in pursuance of the preceding article, and the

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place fixed for keeping his office, and to insert the same, as given to him, in the proclamation, announcing the polling in the form K.

291. In the event of the death or legal incapacity of the special agent appointed in pursuance of article 289, the candidate shall forthwith appoint another special agent in his place, by giving notice in writing of the name, occupation, domicile and address of the person so appointed, to the returning-officer, who shall forthwith, at the expense of the candidate, publish the same, as provided by the preceding article. Every appointment must also be published in a newspaper published in the electoral district or which circulates therein, or according to article 97.

292. Every candidate is bound to appoint a special agent according to form Z.

The person so appointed shall be known, respectable, solvent and competent to perfectly perform the duties incumbent on him. Persons excluded from the list of electors under article 13, and those excluded by articles 81 and 120, cannot be appointed special agents.

The default to appoint a special agent, or the appointment of a person other than one of those mentioned in the preceding paragraph, is a presumption against the candidate that his conduct of the election is not governed in a strictly legal manner. He then becomes and appoints himself his own special agent and assumes the responsibility thereto attached in the same manner as any special agent by him appointed.

293. In case of the absence of the candidate from the Province, as provided by article 102, five of the electors nominating him are jointly and severally bound to select a special agent for him in the manner and form above prescribed, and to hand the appointment of such special agent, accepted by him, to the returning-officer at the same time as the nomination paper.

The appointment of the special agent cannot be revoked by the candidate except for cause, and such cause must be a contravention or contraventions, by the special agent, of the provisions of this act, and they must be set forth in the notice of revocation.

294. The office of the special agent must be in the electoral district, and be kept open during the usual hours, during the whole of the time of the election, and up to the expiration of the delay to produce the election accounts before him.

All notices and significations for him and his principal may be there served during such time.

295. The special agent must keep a daily statement and account of all sums of money, advances, loans, deposits, notes, checks, subscriptions or other securities whatever convertible into money, paid or to be paid, which are given to him for the purposes of election expenses, and indicate the source of such election funds. He also keeps a similar daily account of the sums paid by him and of all disbursements made or ordered by him, the agreements he enters into and the sums to be paid, the whole so as to be able to make an account under oath in the manner provided in article 303.

If the special agent is replaced, he shall remit and hand over to his successor all that he has on hand concerning his election agency, and render him true and faithful accounts of his operations and management, to as to thoroughly acquaint him with the whole as if he continued the special agency himself in person.

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The candidate or the special agent may, before the election, authorize in writing a person to make the *bonâ fide* necessary and petty disbursements which cannot be delayed and which the special agent cannot conveniently make himself, by reason of distance or otherwise. He procures the accounts and discharges from him and annexes them to his authorization.

Petty disbursements, for lawful expenditure paid in cash out of his own money, made by a person who does not expect to be and is not reimbursed therefor, are not considered to be illegal payments.

296. Whoever at any time, for the purpose of assisting the election of one or more members of the Legislative Assembly, and in view of obtaining a contract from the Government, or having obtained such contract, or having an interest therein, or carrying out the undertaking of which it is the object, or expecting the payment of the price of the enterprise stipulated in the said contract, subscribes, furnishes, gives or promises to give and furnish any sum of money, value or consideration whatever, directly or indirectly, by himself or through other persons on his behalf, to any person, is guilty of a corrupt practice, and is liable, upon conviction, in the discretion of the court, to a fine of not less than one thousand dollars, and not more than double that sum as well as to an imprisonment of not less than one month nor more than twelve months ; and, in default of the payment of the fine so incurred, the offender shall be imprisoned for twelve additional months, unless the fine is sooner paid.

2. Further, the sum furnished, promised, subscribed and paid is declared to belong to the Crown, and may be recovered by it from any person who may receive the same in whole or in part.

3. The contract becomes null *ipso facto* from the day of the offence, and any balance of the price is forfeited in favor of the Crown.

4. Whoever, at any time, for one or more elections, asks for, solicits, obtains, causes to be subscribed or paid, takes or receives, employs or causes to be employed, in whole or in part, any sum of money, value or consideration whatever, declared a corrupt practice as aforesaid, is also guilty of a corrupt practice and is liable to a similar fine and imprisonment.

297. Whoever collects funds (commonly called "election funds,") to defray election expenses must, as soon as possible, pay them over to the special election agent of the electoral district for which they were intended and to no one else.

Every contravention of this article is declared to be a corrupt practice, and whoever is guilty thereof is liable to a fine of four hundred dollars, and imprisonment of six months in default of payment; and further, may be condemned, in the discretion of the court, to an imprisonment of not more than six months, with or without hard labor.

298. All persons, who have any accounts or claims, against any candidate in respect of any election, shall within one month after the day of the declaration of the election, send in such accounts or claims to the special agent of the candidate, otherwise such persons shall be barred of their right to recover such accounts or claims, and cannot be paid thereafter without the commission of a corrupt practice on the part of the person paying and of the person who is paid .

299. Nevertheless, in the event of the death, within such month, of

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any person claiming the amount of any account or claim, the legal representative of such person shall send in such account or claim, within one month of his becoming or having become authorized to act as such representative, otherwise the right to recover such claim shall be barred.

Such accounts and claims shall and may also be sent to the candidate, if there is not, within the said month, any special agent of the candidate, owing to death or legal incapacity.

300. All admitted and lawful election accounts shall be paid during the said month by the special agent, but the special agent shall not pay such accounts, charges or claims without having first approved them himself and having obtained the approval of the candidate.

The month having elapsed, neither he nor the candidate can pay, saving in the manner indicated by the following articles.

When the special agent is personally aware that moneys, other than those which have passed through his hands, and which do not appear in the said account, have been expended in the election, he his bound to mention the fact the end of his account and indicate by whom and for what purpose. The same provision applies for all debts incurred which he knows are not entered in his account.

301. No payment by the special agent, for expenses connected with the election, can be made except upon a detailed account duly receipted, saving payments of less than two dollars, for which it is sufficient to mention the person and purpose.

No payment by the special agent, in violation of the law, which he himself makes without the sanction or connivance or against the wishes of the candidate, can be imputed to the candidate, so as to cause him to lose his political rights, but only for the purpose of avoiding the election.

The accounts furnished to the agent within the prescribed time, and not paid, which are contested, or which he has refused to pay, are endorsed by him with a memorandum showing the reason therefor.

During the thirty days following the month elapsed, the creditor, the candidate and the election agent may each in that case apply to the district judge by petition, and on sufficient proof of the legality and lawfulness of the claim, the judge may allow the payment prayed for to be made in whole or in part, notwithstanding this article.

302. Except when the election is held during the month preceding the opening of a session or during a session of the Legislature, the candidate cannot sit or vote in the Legislative Assembly :

(*a*) So long as the said statements of account have not been produced and delivered according to law ; or

(*b*) So long as he has not obtained a judge's order compelling his special agent to deliver the said statements of account in compliance with the law ; which order shall, at the same time, mention that the default incurred shall not be attributed to any want of good faith or diligence on the part of the candidate, nor to any connivance with the special agent.

Any candidate or special agent may be released from the default of furnishing the statements of account within the prescribed delay and of the consequences thereof, upon petition by him presented to the judge of the district, or to any other judge of the Superior Court as soon as possible alleging, and by proving before him in a satisfactory manner, that such default and omission cannot be attributed to any bad faith or negligence on the petitioner's behalf, nor to his lack of diligence, but that such default and omission are due to uncontrollable circumstances, either

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absence, illness, death, irresistible force, or other reasonable cause of a similar nature, or to involuntary and excusable inadvertence; and the judge may, on the presentation of such statements of account, made in the form prescribed in article 303, and their attestation under oath before him, allow their production and delivery to the returning-officer, and he may give any order necessary for the accomplishment of the formalities for that purpose, so that they may avail as if made within the prescribed delay.

The judge may also, upon satisfactory proof, and for the same reasons, allow the correction of errors or false entries in the statements of account produced, and order, upon their production before him, duly corrected or amended and attested under oath before him, that which may be reasonably necessary in order that the law may be fully observed in this respect.

The judge may also, upon petition of the candidate and under special circumstances, when it is alleged that the agent has knowingly produced and delivered false accounts, the parties being first heard or duly notified, order the statements of accounts, and all proceedings connected therewith to be corrected.

If it appears to the judge that the special agent has refused or made default to produce and deliver the statements of account required of him, any candidate or elector may, on petition to the judge, obtain an order compelling the said special agent to appear before him, and, unless cause to the contrary be shown, to produce, within a specified short delay, such statements of account; the judge may examine him as a witness upon suggestions, and, in default of complying with his order, may condemn him to a fine of one hundred dollars, and by coercive imprisonment compel him to account and to deliver the statements of account, without prejudice to any other penalty imposed by his act.

On petition presented by any creditor, candidate or special agent, the judge may, upon sufficient proof and according to circumstances, allow and order the payment of an account due, contested or rejected, and even of an account that was not produced within the delay of one month, or which has been sent to the candidate instead of the special agent, and such order is sufficient to legalize the payment as made within the prescribed delay.

All contraventions of the provisions of this article by the candidate or his special agent are declared to be corrupt practices, saving those from which they have been respectively relieved by the judge.

They invalidate the election, without prejudice to the penalties incurred.

303. A full and detailed statement of all sums of money received by the special agent, as mentioned in articles 289 and 295, of all the election expenses incurred by a candidate or on his behalf, including such expected payments not made or to be made, and which are objected to or rejected as aforesaid, shall, within thirty days after the delay of one hereinabove fixed, be made out and signed by the special agent, or, if there are more than one, by every agent who has paid the same, and by the candidate in cases of payments made by him, and delivered, with the bills and vouchers relative thereto, to the returning-officer.

If owing to the death of any creditor, an account has not been sent in within the month next after the election, a supplementary statement including the account of the deceased creditor, shall be made and delivered, as herein-above prescribed, within thirty days after such account shall have been received.

Such accounts are attested on oath as true and exact before the

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returning-officer, who, on receiving the same, shall place his attestation at the foot thereof.

304. Any special agent or candidate, failing to deliver within the prescribed delay, to the returning-officer the statements required by article 303, shall incur a penalty of two hundred dollars, and imprisonment for six months in default of payment, and an additional fine of ten dollars per day, counting from the said delay fixed until the day he shall have delivered such statements, and, upon refusing to furnish the statements required, the special agent may be compelled thereto by coercive imprisonment as hereinabove provided.

305. Every special agent or candidate wilfully delivering unto the returning-officer any untrue, false, or inaccurate statement, shall be deemed guilty of a corrupt practice, and shall incur a penalty of five hundred dollars, and imprisonment for twelve months in default of payment, and further an imprisonment not exceeding six months, with or without hard labor.

306. The returning-officer shall preserve all such accounts and vouchers, for at least one year; he shall permit any elector to see and examine the same, on payment of a fee of twenty cents.

He grants certified copies thereof at the rate of ten cents per hundred words.

If there is a contestation as to the validity of the election, or an election petition pending, he shall keep them until the final decision.

307. The returning-officer shall, at the candidate's expense, cause to be published in the *Quebec Official Gazette*, and in a newspaper circulating in the electoral district, within fourteen days, a summary of such statement, with the signature of the special agent attached thereto, which summary he prepares on receiving the statements.

The publication contains a notice that the statements are open to inspection upon payment of a fee of twenty cents.

308. Schedule AA to this act fixes the maximum of the expenses to be made or incurred for each election.

Saving the exceptions contained in this act, the payment of any sum of money, by the candidate or his special agent, for any expense incurred before, during or after the election and connected with or arising from the conduct, organization, or holding of such election, which exceeds the sum fixed in the said schedule AA, is an illegal payment and constitutes a corrupt practice.

All promises, agreements or undertakings to pay are assimilated to payments within the meaning of this article.

309. The first and second parts of schedule AA to this act mention the persons who may be employed for the purposes of an election and be lawfully paid.

Saving such exceptions as may be contained in this act, no other person can be employed or engaged in consideration of any payment whatsoever for the purposes of an election.

If a person is employed or engaged, in contravention of the provisions of this article, before, during or after an election, the person who has so employed or engaged him shall be deemed guilty of a corrupt practice, and the person who shall have been so employed or engaged shall be considered guilty of the same offence, if he was aware that he was so employed or engaged in contravention of the law.

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§ 3. — *Offences and Penalties.*

310. Every person found guilty of a corrupt practice shall, when no other penalty is enacted by this act, be liable to a fine of two hundred dollars and, in default of payment, to an imprisonment of three months, and moreover, in the discretion of the court, to an imprisonment not exceeding two months, with or without hard labor.

311. Every person shall be liable to a penalty not exceeding two thousand dollars, and imprisonment for twelve months in default of payment :

(*a*). Who, illegally or maliciously, either by violence or stealth, takes from a returning-officer, deputy returning-officer, or poll-clerk, or from any officer or person having the lawful custody thereof, or from the place in which they are then lawfully deposited, any ballot-box, list of electors, copy of or extract from any list of electors, writ of election, return to a writ of election, poll-book, report, certificate, affidavit, or other document or paper prepared or drawn up in conformity with this act, or in compliance with any of the provisions thereof, or

(*a*). Who illegally or maliciously destroys, injures or obliterates them, or with deliberate purpose or maliciously causes them to be destroyed, injured or obliterated, or

(*b*). Who makes, or causes to be made any erasure, addition or interpolation of names, in any such documents or papers, or

(*d*). Who aids, abets or contributes to their being taken, destroyed, injured or obliterated, or to the making of erasures, additions, or interpolations of names therein.

2. Every returning-officer, deputy returning-officer or other person intrusted with the issue of copies of lists of electors or who is the legal custodian or depositary of such lists, who knowingly makes any alteration, omission or insertion in such lists or certified copies, or falsifies them in any manner, incurs a penalty of two hundred dollars, and imprisonment for twelve months in default of payment, with or without hard labor.

§ 4. — *Prosecutions.*

312. Every prosecution, concerning a penalty imposed by this act, may be brought by an elector of the electoral district in which the infringement is alleged to have taken place, by an action of debt, before any court in such district having civil jurisdiction for the amount demanded.

313. It shall be sufficient for the plaintiff in such action or prosecution to allege in the declaration that the defendant is indebted to him in the sum of money which he demands, that the offence, for which the action or prosecution is instituted, has been committed, and that the defendant has acted in contravention of this act, without mentioning the writ of election or the return thereto.

314. No such prosecution shall be instituted, unless, with the *præcipe* or demand of summons, there be produced an affidavit of the plaintiff, drawn up in accordance with form BB.

The defendant in any such prosecution may, before pleading, obtain that all proceedings thereon be stayed, until the party prosecuting do furnish such security as may be deemed necessary, in the discretion of the court or judge, or do deposit with the clerk of the court such sum of money as shall be fixed by the court or judge to pay the costs to be incurred in such suit.

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315. It shall not be necessary, at the trial of such suit, to produce the writ of election, or the return thereto, or the authority of the returning-officer, but parol evidence of these facts shall be sufficient proof of the same.

The certificate of the returning-officer to that effect shall constitute sufficient proof of the election having been held, and of the fact of any person therein stated to have been a candidate having been such candidate.

316. The amount of any penalty, which a defendant shall be condemned to pay, shall belong to the prosecutor, without prejudice to article 287.

317. When any person is prosecuted for any offence or violation of the provisions of this act, committed by him together with one or more persons, either as accomplices, abettors or receivers, or in any other manner, and that such person has already prosecuted such accomplice or accomplices for the same offence, no fine, penalty or forfeiture can be pronounced or recovered against him for the same offence; but the benefit of this provision shall be denied him if it be shown to the court that such person was the principal in the offence and that he had commenced it.

The informant, who prosecutes his accomplice or accomplices and succeeds in having them condemned and punished for a violation of this act, is himself absolved and declared relieved from any forfeiture incurred for the same offence.

Power in given to the court to reduce the fines and penalties imposed by this act, and to lessen the punishment incurred in favor of defendants who, being guilty, confess judgment, and submit themselves to the clemency of the court.

318. Saving the case of article 178, no person shall be excused from answering any question put to him in any action, suit or other proceeding in any court, or before any judge, commissioner or other tribunal, touching or concerning any election, or the conduct of any person thereat or in relation thereto, on the ground that the answer to such question tends to expose him to any prosecution or condemnation under this or any other act.

But no answer given by any such person shall be used to his prejudice in any civil proceeding against such person, if the judge, commissioner, or court has given to the witness a certificate that he claimed the right to be excused from answering on the aforesaid ground, and made full and true answers to the satisfaction of the judge, commissioner or court.

319. In any action, suit or proceeding under this act, the parties themselves are authorized to testify and may be compelled so to do in the same manner as any witness, and subject to the same exceptions, — but no use can be made of such testimony outside of the case, in any other manner whatever.

320. Unless, for special reasons, the court deems it advisable to order otherwise, the party failing in any such prosecution shall bear the costs thereof, and, if such party be the defendant, the costs shall be payable over and above the penalty imposed.

If, however, the prosecution is abandoned or dismissed and the judge is of opinion that the same was maliciously brought for the purpose of harassing and annoying the defendant, and without a reasonable cogniz-

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ance of the facts alleged, the judge may, on dismissing the same, condemn the plaintiff to pay double costs to the other party.

321. Every action of prosecution brought in virtue of this act shall be instituted within three months next after the proclamation of the candidate for offences committed up to that time, and within twelve months for subsequent offences, and not later, notwithstanding any provision to the contrary in this act or in any of its amendments, unless the defendant has, by absconding, withdrawn himself from the jurisdiction of the court.

Such action or prosecution, once begun, shall be continued and prosecuted without wilful delays, and has precedence.

322. In the event of the suspension or delay at any stage of the proceedings, the judge or court, seized of the cause, may permit one or more persons to intervene and carry on such proceedings to judgment and execution; and in that case the penalty and costs shall belong to the intervening party, who shall cause the same to be levied.

323. If it appears, by the return to a writ of execution or by the subsequent proceedings, that the defendant has no property, or that his property is insufficient to satisfy the judgment, such defendant shall, in virtue of a writ to that end issued by order of the court or of any judge, be imprisoned during the whole period of time specified in the provision of this act under which the penalty is imposed.

Nevertheless, the defendant may, unless liable to other imprisonment, procure his release, by paying in full the amount of the penalty, together with the costs incurred as well before as after judgment.

324. Every justice of the peace, convicted or reported as guilty of a corrupt practice at an election, shall be struck from the list of justices, whether he has obtained a certificate of indemnity or not.

325. When the commission of an infringement to this act is punishable by imprisonment alone, the prosecution may be instituted and judgment obtained and executed by any person making the complaint before a judge of the sessions of the peace, district magistrate or sheriff having jurisdiction and exercising his functions in the districts in the limits whereof the offence was committed.

The procedure to be followed in such cases is that prescribed by part LVIII of the Criminal Code, 1892, but there shall be no appeal from the decision given.

§ 5. — *Fees and expenses.*

326. The following allowances and sums shall be allowed to the different election officers, for their services and disbursements:

I. — RETURNING-OFFICERS.

1. For the personal services of the returning-officer, fifty dollars, whether polls are or are not held;

2. For the personal services of the election clerk, four dollars, or, if if polls are held, eight dollars;

3. For services of one constable, if considered necessary at the nomination, one dollar;

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4. For printing proclamations, list of candidates, and directions to electors, actual cost ;

5. For posting proclamations, actual cost, not exceeding ten cents per mile necessarily travelled, going and returning :

6. For each mile necessarily travelled by the returning-officer and election clerk, in going to and returning from the place of nomination, actual cost, not exceeding ten cents per mile ;

7. For posting up the notice of voting, appointing and swearing the deputy returning-officers, and furnishing them with ballot-boxes, ballot-papers, printed directions for the guidance of electors, and lists of electors, actual cost, not exceeding ten cents for each mile necessarily travelled, going and returning ;

8. For copies of lists of electors, duly certified by the legal custodian thereof, three cents for each ten electors ;

9. For each certificate of such custodian, fifty cents ;

10. For collecting the ballot-boxes and lists of electors used at each poll, and swearing the deputy returning-officers after the close of the polling, actual cost, not exceeding ten cents for each mile necessarily travelled, going and returning ;

11. For transmitting election returns to the Clerk of the Crown in Chancery, including postages and telegrams, actual cost ;

12. For use, when a public building is not obtainable, of private building for nomination, actual cost, not exceeding four dollars :

13. For ballot-boxes, when furnished by him, and for ballot-papers, and for any other disbursements absolutely required and not hereinbefore provided for, actual outlay ;

14. For the service of the returning-officer in assisting at the recounting of the ballot-papers before the judge, under articles 204 to 212, five dollars ;

15. For the services of the election clerk at the recounting of the ballot-papers, as above, three dollars a day :

16. In the case mentioned in paragraphs 14 and 15, the returning-officer and the election clerk shall be further entitled to four dollars a day for travelling expenses, if they are obliged to go any distance to assist at the recounting of the ballot-papers.

II. — DEPUTY RETURNING-OFFICERS.

17. For swearing the poll-clerk before and after the polling, one dollar :

18. For his services, four dollars ;

19. For services of poll-clerk, two dollars ;

20. For services of a constable, if considered necessary, one dollar ;

21. For mileage of deputy returning-officer and poll-clerk in going to and returning from the poll, neither exceeding in any case twenty miles, actual cost, not exceeding ten cents per mile ;

22. Actual expenses incurred for the use of polls, not exceeding ten dollars in cities, and four dollars in other electoral districts ;

23. For making compartment or screen in the poll-house, if necessary, a sum not exceeding three dollars.

327. The Lieutenant-Governor in Council may, if he is of opinion that

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the fees and allowances aboves mentioned are not sufficient for the services required in the electoral districts of Gaspé and of Chicoutimi and Saguenay, authorize the payment of such additional sums as he shall deem just.

328. The Lieutenant-Governor in Council may, if he deems the tariff prescribed by article 326 not suitable or sufficient, make a new tariff of fees, costs and expenses, to be paid to the different election officers.

He may also, from time to time, revise and amend such tariff, which shall be substituted at any election subsequent, to that hereinbefore mentioned.

A copy of every tariff, and of any amendment to any tariff made under this article, shall be submitted to the Legislative Assembly at the then next session of the Legislature.

329. Such fees, disbursements and allowances are paid to the returning-officer out of the consolidated revenue fund of the Province, and are by him apportioned among the different officers and persons entitled thereto.

The returning-officer shall report, respecting such distribution, through the Provincial Secretary.

330. No returning-officer, election clerk, deputy returning-officer, or poll-clerk shall be entitled to the costs or expenses incurred by him in going to the person before whom be must take any oath required of him.

SECTION VI.

FINAL PROVISIONS.

331. A copy of this act, and of the directions approved by the Lieutenant-Governor in Council, which may be necessary for the due conduct of elections under this act, with a detailed alphabetical index placed in the beginning thereof, for the returning-officer, and one for each of his deputy returning-officers, shall be transmitted, together with the writ of election, to each returning-officer in the Province.

332. The Clerk of the Crown in Chancery may cause to be made for each electoral district, when the ballot-boxes already made are insufficient for the purpose or have been lost, as many new ballot-boxes as may be required, or may give such directions to the returning-officers as he shall deem necessary to procure ballot-boxes of uniform size and pattern, as also in relation to the mode of making compartments in the poll.

Such directions shall have been previously approved by the Lieutenant-Governor in Council.

SECTION VII.

REPEAL AND COMING INTO FORCE.

333. This act is substituted for chapter second of title second of the Revised Statutes which is repealed, as are all provisions which amend the same.

334. Article 138 of the Revised Statutes is also repealed.

335. This act shall come into force on the day of its sanction.

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60 VICTORIA, CHAP. 21.

AS AMENDED BY 62 VICTORIA, CHAP 15.

An Act to amend the Quebec Election Act, 1895

[*Assented to 9th January, 1897.*]

HER MAJESTY, by and with the advice and consent of the Legislature of Quebec enacts as follows :—

SECTION I.

PREPARATION OF THE LIST OF ELECTORS IN THE CITY OF MONTREAL.

1. At the same time as they make the list of municipal electors in the city of Montreal, in eighteen hundred and ninety-eight, and thereafter every second year at the same time, the assessors appointed in accordance with the charter of the said city, shall make, in duplicate, an alphabetical list of the persons in that city qualified to vote at an election of a member of the Legislative Assembly, in the terms of articles 9 and following of the Quebec Election Act, 1895.

2. On such list they shall enter the names of the persons having the said qualification who are mentioned in the list of municipal electors, those whom they know as having the required qualification, and those who apply for entry thereon and who establish to their satisfaction that they possess such qualification.

3. For the purpose of facilitating such application, the assessors shall give, during the last week in the month of November of the year during that in which they make the list, in two daily newspapers published in French in the city of Montreal, and also in two daily newspapers published in English therein, a notice calling upon the persons who have the necessary franchise to present themselves in person at their office to make such demand, or to forward their application to that effect in writing to the said office, on or before the twentieth of December following.

4. The declarations made before the assessors by the persons applying to be entered, and the written applications, must show the nature of the qualification of those making the same, and be attested under oath ; and each of the assessors may receive such oath.

5. In the preparation of the list, the assessors shall comply with the following articles of the said election act, to wit ; 2, 8 to 16, inclusively, 18 ot 24, inclusively, and 27 ; and all the provisions of the said articles respecting the secretary-treasurer shall apply to the assessors.

6. On or before the thirty-first of December in the year during which they are obliged to make the list, the assessors shall transmit both duplicates of the list which they have made, after duly attesting the same, to

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the city-clerk, who shall see that one of the duplicates be deposited in his office, or in some other suitable place in the city-hall, for the information of all persons interested.

7. Within five days after the reception of the duplicate lists, the city-clerk shall cause to be published a notice in which he shall state that the list of electors of the city having a right to vote at an election of a member of the Legislative Assembly has been prepared, and that a duplicate thereof is deposited, for the information of those interested, in his office, or in some other place in the city-hall which he mentions.

Such notice is published in the manner prescribed in article 3 of this act.

SECTION II.

EXAMINATION, CORRECTION AND PUTTING INTO FORCE OF THE LIST OF ELECTORS IN THE CITIES OF QUEBEC, MONTREAL AND THREE-RIVERS.

8. There shall be, for each of the cities of Montreal, Quebec and Three Rivers, a board of revision called the "Board of Revisors of the city of (*name of the city*)."

The said board shall be composed of three persons selected and appointed as follows :

The city council of each of the said cities shall, within twenty days after the sanctioning of this act, appoint one of the said revisors, who shall be either the recorder, or an advocate or notary of at least eight years' practice, who has not been a candidate at any federal, provincial or municipal election for the past ten years.

The Lieutenant-Governor in Council shall appoint one of the said revisors, who shall be chosen from among the advocates or notaries of at least eight years' practice, and who has not been a candidate at any federal, provincial or municipal election for the past ten years.

The third revisor shall also be appointed by the Lieutenant-Governor in Council, but he shall be chosen from among the district magistrates, judges of the sessions, prothonotaries of the Superior Court, or clerks of the Crown or of appeals.

Each revisor shall, during the whole time he occupies the office of revisor, reside in the city for which he is appointed, and shall not vote or be elected or take part in elections, in any of the electoral divisions comprised within the limits of the city for which he acts. 62 V., c. 15, s. 1 § *a*.

In the event of the death or resignation of one of the said revisors, he shall be replaced within thirty days thereafter, by the authority which had appointed him, and under the same conditions.

Notice of the appointment of the said revisors shall be given in the *Quebec Official Gazette*.

The persons so appointed as revisors shall make oath, before a judge of the Superior Court, to properly and faithfully perform their duty.

Each revisor so appointed shall receive an indemnity of two hundred dollars for Montreal, one hundred and fifty dollars for Quebec, and one hundred dollars for Three Rivers, for each year that there shall be a revision. One half of such indemnity shall be payable by the Province out of the Consolidated Revenue Fund, and the other half by the said cities of Quebec, Montreal and Three Rivers respectively.

The cost of notice in the newspapers, which shall be required for carrying out this act, shall be paid in the same manner and in the same proportion.

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The board of revisors has, for the purpose of maintaining order during its sittings, the summoning, examination, and punishment of witnesses, the same powers as the Superior Court.

Every oath under this act may be validly taken before the board of revisors, each of the members thereof or its clerk, or before a commissioner of the Superior Court or a justice of the peace. 62 V., c. 15 s. 1 § *b*.

Senators and Legislative Councillors cannot be revisors.

In case the city council should not appoint its revisor within the prescribed delay, the Lieutenant-Governor in Council shall appoint him in its stead.

9. It shall be the duty of such board, in each of the cities for which it is appointed, to examine and correct the list of electors of such city who are entitled to vote at an election of a member of the Legislative Assembly.

At their first sitting the revisors shall select one of their number as president of the board, and another as vice-president.

They shall decide all questions submitted for their decision by the majority of votes.

Two of the revisors shall be a quorum, who may lawfully sit, and, in the event of their votes being equally divided, the president of the board or, in his absence, the vice-president shall also have a casting vote.

10. The clerk or secretary-treasurer of each city shall *de jure* be clerk of the board of revisors of the city whose clerk or secretary-treasurer he is, and shall act as such.

His office shall be the office of the board of revisors.

11. The municipal council of each of the aforesaid cities shall place, at the disposal of the board of revisors of such city, a proper place for holding the sittings of such board, and shall supply it with everything needed for its labors.

12. In the year one thousand eight hundred and ninety-nine, and every two years thereafter, the board of revisors shall proceed to examine and correct the list of electors, in the cities of Quebec and Three-Rivers, within sixty days from the notice given under article 26 of the said election act, and in the city of Montreal, within sixty days from the notice given under article 7 of this act. 62 V. c. 15, s. 2.

13. Such examination and correction take place upon complaint to that effect produced, under either of the two following articles, and not otherwise.

13*a*. Any person, who deems himself aggrieved, either by the insertion of his name in the list or its omission therefrom, may, either by himself or through his agent, file in the office of the board of revisors a complaint to such effect, in writing and under oath, within the fifteen days next after the publication of the notice mentioned in article 26 of the said Election Act if it concerns the cities of Quebec and Three-Rivers, and in section 7 of this act if it concerns the city of Montreal.

13*b*. Any person, believing that the name of any person entered on the list should not have been so entered, owing to his not possessing the qualifications required for an elector, or that the name of any other person not entered thereon should be so entered, owing to his possessing

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the qualifications required, may, within a like delay of fifteen days, file in the office of the board of revisors a complaint in writing and under oath, to that effect, attesting that, to the personal knowledge of the deponent, the person whose name he requires to be entered on, or omitted from the list is or is not qualified as an elector.

13*c*. Before proceeding to any examination or correction of the list of electors, the board of revisors shall cause to be given, through its clerk, public notice of the place where, and day and hour when such examination shall begin. Such notice may specify that the board shall proceed on the distinct days therein mentioned to examine and correct the lists for any ward of the city in question.

Previous to taking into consideration the complaints filed in the office of the board of revisors with respect to the list of electors, the board shall also cause a special notice, signed by its clerk, to be given, containing the names of the persons whose insertion in or omission from the list has been demanded.

The public notice and special notices required by this section shall be of five days duration.

In the cities of Quebec and Montreal, the notices must be published once in a French newspaper and once in an English newspaper of the city in which the list is prepared; and in the city of Three-Rivers they must be given and published or served in the same manner as municipal notices.

There is allowed to the clerk of the board of revisors, at the expense of the complainant, a fee of twenty-five cents for each special notice by him given to any person whose name shall neither be added to nor struck from the list by the board of revisors or by the judge if there is an appeal.

13*d*. The board of revisors, in proceeding to the examination, first verifies the correctness and regularity of the proceedings had in preparing the list and draws up a *procès-verbal* thereof, then takes into consideration all the complaints in writing and under oath, relating to the said list, and hears all persons interested and their proof, on oath, if necessary.

13*e*. The board of revisors, by its decision on each complaint, may confirm or amend each of the duplicates of the list; then, if necessary, it redivides the list in consequence thereof, according to the polling subdivisions, keeping the alphabetical order of the electors thereon.

13*f*. If, upon sufficient proof, the board of revisors is of opinion that a property has been leased, assigned or made over under any title whatsoever, with the sole object of giving to a person the right of having his name entered on the list of electors, it shall, upon complaint to that effect in writing and on oath and evidence under oath, strike the name of such person from the said list.

13*g*. Every insertion in, erasure from, or correction of the list in virtue of the the two preceding articles shall be authenticated by the initials or *paraphe* of the president of the board of revisors.

14. The list of electors, as it then exists, shall come into force at the expiration of the sixty days following the notice given under the above mentioned article 26 of the said Election Act if it concerns the cities of Quebec and Three Rivers, and under section 7 of this act if it concerns the city of Montreal.

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It shall remain in force for two years from the time of its coming into force, and thereafter, until a new list shall have been validly made and put into force.

Notwithstanding the appeal to a judge of the Superior Court touching a portion of the list, such portion of the list shall remain in force until the final decision of the judge before whom the petition in appeal is pending.

14*a*. Saving, nevertheless, any correction made under article 50 of the said Election Act, every list of electors so put into force, even although the valuation roll, which has served as the basis thereof, be defective or shall have been quashed or set aside, shall, for the whole period during which it remains in force, be deemed the only true list of electors within the territorial division to which it relates.

14*b*. So soon as the list of electors has come into force, it shall be the duty of the clerk of the board of revisors to insert at the end of such list, in the duplicates thereof, the certificate prescribed by article 42 of the said Election Act. 62 V. c. 15, s. 3.

15. Under the provisions of articles 46 and following of the said Election Act, an appeal shall lie from the decisions of the board of revisors or from its refusal to take any complaint into consideration.

SECTION III.

TEMPORARY PROVISIONS.

16. Within thirty days after the coming into force of this act, the board of revisors, constituted in the manner prescribed in article 8 of this act, for each of the above named cities, shall give notice, in the daily newspapers mentioned in article 3, if for Montreal, in one daily newspaper in French, and in one in English, published in Quebec, if for Quebec, and in at least one newspaper, published in Three Rivers, if for Three Rivers, that it will proceed within thirty days after such notice to the examination and correction of the last lists in force of electors of the city having a right to vote at an election of a member of the Legislative Assembly.

17. For the purpose of such examination and correction, the clerk or secretary-treasurer of each of the said cities above named shall, on demand, furnish to the board of revisors of the city of which he is the clerk or secretary-treasurer, the last list, made for the city, of electors having a right to vote for a member of the Legislative Assembly.

18. Articles 9 to 14 of this act, and the provisions of the Election Act to which they refer or which have not been derogated from, shall apply to such examination and correction.

19. In each of the cities above named, the list of electors so examined and corrected shall come into force, as it shall then exist, at the expiration of the thirty days following the notice given in virtue of article 16 of this act.

It shall replace all other lists in the city for which it is made, shall be the only list in force in such city until the coming into force of the lists to be made in eighteen hundred and ninety-nine, in virtue of the

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above provisions, and thereafter, until a new list is lawfully made and put into force.

20. Within fifteen days after the coming into force of the list so corrected, the clerk or secretary-treasurer in each of the above-mentioned cities shall forward to the registrar entitled thereto, a copy, certified by the revisors, of the list so corrected.

SECTION IV.

MISCELLANEOUS.

21. Any person omitting, neglecting or refusing to do an act or perform any duty which he is obliged to do or perform by this act, or in virtue of the provisions of the said Election Act to which it refers, shall be guilty of an offence which will render him liable, if not otherwise punishable by the said Election Act, to a penalty of two hundred dollars, and an imprisonment of six months in default of payment, and, if the offence is continued for more than two days, to a similar penalty for each additional day it so continues.

Prosecutions under this act are governed by Part LVIII of the Criminal Code, 1892.

22. All the provisions of the said Election Act, which are not derogated from by this act, shall continue to govern, *mutatis mutandis*, the lists of the above named cities.

23. to **29.** These articles amend the Election Act, directly, and have been inserted in the articles they amend.

30. This act shall come into force on the day of its sanction.

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SCHEDULE

A

FORM MENTIONED IN ARTICLES 18 AND 27.

PROVINCE OF QUEBEC,
Municipality of
In the County of

LIST OF ELECTORS FOR THE LEGISLATIVE ASSEMBLY

No.	Surnames.	Names.	Occupation.	Residence.	Nature of Qualification.	Names and surnames of father or mother, if the person is entered as farmer's son, &c.	Description of immoveable.	Remarks.
1	Aubin	Jean-Baptiste	Farmer	St. James	Proprietor		Con. des Pins No	
2	Aubin, fils	Jean-Baptiste	Farmer	St. James	Farmer's son	Jean-Bte Aubin	Idem	Eldest son.
3	Aubin	Joseph	Farmer	St. James	Idem	Jean-Bte Aubin	Idem	Younger son
4	Bédard	Joseph	Farmer	St. James	Tenant		Village No	
5	Bédard, fils	Joseph	Farmer	St. James	Farmer's son	Joseph Bédard	Idem	Eldest son.
6	Marchand	Gabriel	School teacher	St. James	School teacher			Village school
7	Brousseau	Louis	Rentier	St. James	Rentier, $200			
8	Jacques	Stanislas	Wheelright	St. James	Proprietor		Cadastre No	
9	Lorimier	Charles	Farmer	St. James	Farmer's son	Marg. Bourgeois, wid. of C. Lorimier	Con. des Pins No	Eldest son.
10	Lorimier	David	Farmer	St. James	Farmer's son	Idem	Idem	Younger son.
11	Lorimier	Jean-Baptiste	Physician	St. James	Proprietor		Village No	
12	Sylvestre	Louis	Farmer	St. James	Proprietor		Rg St. Mich. No	
13	Sylvestre	Pierre	Student	Quebec	Farmer's son	Louis Sylvestre	Idem	Younger son.
14	Tourville	Jean	Fisherman	St. Jacques	Occupant and Owner of shares in a registered ship, $150		Village	Real est. occupied & shares in ship valued together.

Made in duplicate this day of the month of , nineteen hundred and

I. P. P., swear that, to the best of my knowledge and belief, the foregoing list of electors is correct, and that nothing has been entered or omitted thereon or therefrom, unduly or by fraud. So help me God.

Sworn at , this day 19 .
before me the undersigned.

P. P.
Secretary Treasurer.

F. F. justice of the peace.

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2.—Quebec License Law

63 VICTORIA.

CHAP. 12.

An Act to consolidate and amend the Quebec License Law.

[*Assented to 23rd March, 1900.*]

HER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows :

1. This act may be referred to and cited as the "Quebec License Law." It applies to the Province, and to the mining divisions therein so long as paragraph 1 of section xxvii of this law, comprising articles 79, 80, 81, 82, and 83, has not been put into force by proclamation. R. S., 827.

PART I.

LIQUOR LICENSES.

SECTION I.

INTERPRETATIVE AND DECLARATORY.

2. The following terms and expressions used in this law have the meaning hereinafter aplied to them, unless the context clearly indicates a different meaning :

1. Intoxicating liquors are brandy, rum, whiskey, gin, wines of all descriptions, ale, beer, lager-beer, porter, cider, and all other liquors containing an intoxicating principle, and all beverages composed, wholly or in part, of any such liquors.

2. Temperance liquors are all kinds of syrups and other similar liquids or beverages, simple or mixed, in which there is no intoxicating principle.

3. Houses of public entertainment are houses or places of public resort, established for the reception of travellers and of the public, wherein consideration of payment, food and lodging are habitually furnished. Such houses of public entertainment are inns and temperance hotels.

4. An inn, embracing those establishments also called hotels and taverns, is a house of public entertainment, where intoxicating liquors are sold.

5. A tavern at the mines is an inn kept within a radius of five miles from the place where mining is being prosecuted.

6. A restaurant is an establishment where, in consideration of pay-

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ment food (without lodging) is habitually provided, and where intoxicating liquors are sold.

7. The word "bar" shall mean the place, behind the counter, in which the said liquors are kept for sale.

8. A temperance hotel is a house of public entertainment in which no intoxicating liquors are sold.

9. A liquor shop is any store or shop where intoxicating liquors are sold, without food or lodging being provided.

Liquor shops are divided into wholesale and retail shops.

10. A wholesale liquor shop is that wherein are sold, at any one time, intoxicating liquors in quantities not less than two gallons, imperial measure, or one dozen bottles of not less than one pint, imperial measure, each.

11. A retail liquor shop is that wherein are sold, at any one time, intoxicating liquors in quantities not less than one pint, imperial measure.

12. A club is an association in which the profits from the sale of intoxicating liquors and the use of billiard tables belong to the members of the club, who are *bonâ fide* proprietors of all the moveable property therein and are proprietors or lessees of the establishment.

13. A member of a club, within the meaning of this law, is a person who has been duly elected by ballot, after his name has been publicly posted up in the club for at least eight days previous to the balloting, and who has paid the entrance fee and all other fees fixed by the rules of the club.

14. A steamboat bar is a place or apartment established for the sale of intoxicating liquors in a steamboat or other vessel, the word vessel including every craft.

15. A railway buffet is a place or apartment within a railway station, where, in consideration of payment, food is habitually or occasionally provided for railway travellers, and intoxicating liquors are sold.

16. The words "railway train" comprise every passenger and colonist train of every description running in any part of the province of Quebec.

17. A bottler is a person who places in bottles or in kegs or casks the fermented liquors known as beer, ale, porter and stout, and sells and delivers them, either at his own premises, or at those of the purchaser, within the limits of any municipality for which he holds a license, either in bottles containing not less than a pint, imperial measure, each, in quantities of not less than a dozen at a time, or in kegs or casks, in quantities not less than two gallons, imperial measure, at a time; but any person, or the employer of any person, who carries on the business of selling and delivering fermented liquors from a wagon or dray, is, for the purposes of this law, considered a bottler, whether he bottles such fermented liquors himself, or purchases them already bottled from another.

18. A license to sell intoxicating liquors in an inn, restaurant, steamboat, bar, or railway buffet, includes the permission that the liquors so sold be drunk on the premises; but that privilege does not accrue to liquor shops, in which cases all liquor delivered must be consumed outside of such shops.

19. A license to sell wine, ale, beer, lager-beer, porter and cider, exclusively, is termed a "beer and wine license," and is construed to mean an inn or restaurant license, as the case may be, which gives the holder thereof the right to sell ale, beer, lager-beer, porter and cider, and also

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native wines manufactured in the Dominion of Canada, containing not more than fifteen per cent, of alcohol, and light foreign wines, containing not more than fifteen per cent. of alcohol, but not port, sherry or madeira wine or any other intoxicating liquor, subject to the conditions contained in article 40.

20. A license to sell apple cider manufactured by the vendor, or native wine made from grapes or other fruit grown and produced in the Dominion of Canada and manufactured by the vendor who must reside and manufacture such cider or native wine within the limits of the Province gives the right to sell, at any one time, such cider or native wine in quantities not less than two gallons, imperial measure, or one dozen bottles of not less than one pint, imperial measure, each, at any one time, to be wholly removed and not drunk on the premises.

If the licensee has complied *mutatis mutandis* with the formalities prescribed by article 47 respecting the application for and the confirmation of a certificate for this object, he may sell such cider or native wine in quantities not less than half a gallon, imperial measure, or three bottles of not less than one pint each, imperial measure, at a time, the said cider or wine to be wholly removed and not drunk on the premises.

21. A sample or commission license gives the right to sell, by sample or on commission, intoxicating liquors, in quantities not less than two gallons, imperial measure, or one dozen bottles of not less than a pint each, imperial measure, at any one time, such liquors not to be the property of the vendor, whether such liquors are in the Province, or held in bond or otherwise not within the limits of this Province.

22. For the purposes of this law, when spirituous liquors are sold in this Province, in sealed bottles or flasks of the dimensions known and styled in the trade as pint bottles or flasks, such bottles or flasks, provided they do not hold less than one half of an imperial pint each, are considered as holding an imperial pint each.

23. Every delivery of intoxicating liquor, made otherwise than gratuitously, constitutes, in the sense of this law, a sale thereof.

The gratuitous character of the delivery is inferred from the circumstances under which the delivery is made, and from the intention of the persons, respectively, delivering and receiving the liquors.

Every delivery of intoxicating liquor in a house of illfame or assignation house is a delivery for value and a sale within the meaning of this law.

Every delivery, not gratuitous, is considered as being that by sale, without its being necessary to prove the delivery of any payment in money therefor, or of any object having a pecuniary value, as price of the sale of such liquors.

24. The word "keeper", when used in this law, includes the person actually contravening the provisions thereof, whether acting on behalf of himself or of another or others.

25. The informer is the person who gives the particulars whereon a prosecution for a contravention of this law is brought.

26. The revenue officer appointed under article 745 of the Revised Statutes, and to whom under article 749 of the said Statutes, one or more of the portions of this province erected into revenue districts have been assigned, who has, by this law, the power to issue licenses thereunder, and who, in the Municipal Code, is called the collector of inland revenue, is called, for the purposes of this law, collector of provincial revenue.

27. The word "district", when used alone, means one of the districts so established under article 749 of the Revised Statutes.

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28. Organized territory is such portion of the territory of the Province which is erected into a municipality, and non-organized territory is such portion of said territory which is not so erected.

29. A polling subdivision, in all municipalities except cities, is any subdivision, for voting purposes at elections of members of the Legislative Assembly, of an electoral district in the province, as shown by the electoral list then in force.

30. In all cities, the following expressions: "ward of the city", "polling subdivision", "polling district" and "electoral district", when they concern a license certificate or an opposition thereto, shall mean any subdivision for polling purposes at municipal elections, as shown by the electoral lists of the city then in force.

31. Any reference in this law to an article, without mentioning the law of which such article forms, part, is a reference to an article of this law. R. S., 828.

SECTION II

GENERAL PROHIBITIONS.

3. It is forbidden to all persons, corporations, or clubs, under pain of the fines and penalties hereinafter promulgated, to keep within the limits of this Province:

1. Any inn or hotel, any tavern at the mines, any restaurant, steamboat bar, dining-car buffet, railway buffet, any temperance hotel, or any liquor shop, wholesale or retail;

2. To sell intoxicating liquors, whether by sample, on commission or otherwise, or in a club or asosciation of any kind;

3. To sell wine, ale, beer, lager-beer, porter and cider;

4. To sell apple cider or native wine manufactured by the vendor;

5. To carry on the trade of bottler;

6. If a druggist, to sell intoxicating liquors without one of the certificates mentioned in article 105, or in quantities exceeding one pint, imperial measure, at a time:

Without having previously obtained, in the manner and form, and after payment of the duties and fees hereinafter mentioned, a license, for each of the said objects. R. S., 829.

SECTION III.

BY WHOM LICENSES ARE ISSUED AND THEIR DURATION.

4. The officer appointed under any mining act in force in this Province, in charge of any mining district or division, shall alone have the right to issue licenses for the sale of intoxicating liquors within a radius of five miles from any mine that is being worked.

Such licenses are subject to such duties as the Lieutenant-Governor in Council may determine, not however to be less than one hundred and twenty-five dollars for any one license, and shall be held subject to such regulations as may be adopted by the Lieutenant-Governor in Council. R. S., 830.

5. With the exception of licenses for taverns in mining divisions, which are granted by the officer mentioned in article 4, and which are the only liquor licenses that can be issued in mining divisions, saving

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the provisions of article 6, each license, for any one of the above mentioned objects, is granted in the name of the Lieutenant-Governor, and issued by one of the collectors of provincial revenue or his deputy. R. S. 831.

6. The provisions of articles 4 and 5 respecting the issue of tavern licenses do not apply to cities and incorporated towns. R. S., 831a.

7. Each collector of provincial revenue delivers the licenses to be used within the limits of the district assigned to him, and he collects the duties and fees imposed for such licenses by law.

In the case of a steamboat bar license, this duty devolves on the collector of provincial revenue for the district where the proprietor, master or person in charge of the said steamboat or vessel, for which such license is required, resides, and, in the event of such steamboat or vessel belonging to a company, on the collector of provincial revenue for the district in which the company holds its head office or principal place of business.

In the case of a dining car license, the duty devolves upon the collector of provincial revenue for the district in which is situate the principal office or station of the railway company within the limits of the Province.

The deputy collector of provincial revenue, in the same manner as his chief, delivers the licenses and collects the duties and fees. R. S., 832.

8. The Lieutenant-Governor in council may, from time to time, name, in his discretion, any person or persons whom he authorizes to sign and deliver licenses to the collectors of provincial revenue, and may likewise determine on their form as well as the date of their delivery. R. S., 833.

9. Except steamboat bar licenses which expire when the boats go into winter quarters, and licenses for taverns at the mines which are of monthly duration, licenses are granted for one year, or for a portion of a year only, and expire on the first day of the month of May subsequent to their issue.

In the case of persons who, during the course of any license year, begin to carry on any business for which a license is required, the Provincial Treasurer may authorize the collector of provincial revenue to accept for the license an amount of duty proportionate to the number of months of the license year still to elapse from the first day of the month during which such persons commence to carry on such business. R. S., 834. *in part.*

10. Subject to the provisions of this law as to removals and the transfer of licenses, every license for the sale of liquor shall be held to be a license to the person therein named only and for the premises therein described, and shall remain valid only so long as such person continues to be the occupant of the said premises and the owner of the business there carried on. R. S., 834*a*.

SECTION IV.

LICENSES FOR INNS.

11. To obtain a license to keep an inn, the following formalities shall be observed :

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Previous to the obtaining of any license for any part of the organized territory of this Province, the applicant shall furnish the collector of provincial revenue with a certificate, according to form A annexed to this law, signed by twenty-five resident municipal electors, or a majority of the resident municipal electors if they number less than fifty, of the parish, township, village, town, or ward of the city, within the limits of which is situated the house for which such license is applied for, to the effect that the applicant is personally known by the signers, that he is honest, sober, and of good reputation, and that he is qualified to keep a house of public entertainment, that the house referred to contains the lodging room required by law, and that a house of public entertainment is needed there. R. S., 835.

12. This certificate shall be accompanied by an affidavit of the applicant, made in accordance with form B annexed to this law, and sworn to before a justice of the peace of the district, or, in the cities of Quebec and Montreal, before any one of the license commissioners.

In the cities of Quebec and Montreal, no certificate for a license shall be granted, if an absolute majority of the municipal electors, residing or having their place of business within the polling district, shall signify their opposition in writing to the granting of such license, or if it be proved, to the satisfaction of the persons called upon to confirm the certificate, that the applicant is a person of bad character, having already allowed or permitted drunkenness or disorder in his inn, that he has already been twice condemned to a fine for having sold liquor without a license, or has been found guilty of smuggling intoxicating liquors. R. S., 836.

13. In the event of the serious misconduct, during the course of any license year, of any person holding a license in the cities of Quebec or Montreal, the license commissioners, upon receiving information thereof, shall at once notify him that his license may not be renewed for the following year.

14. Any licensee in the cities of Quebec, Montréal, St. Henri or Ste Cunégonde, of good repute, who has held a license and complied with all the conditions of this law for the last twelve months and has not been convicted of any infringement thereof, and who produces an affidavit to that affect according to form D annexed to this law, may apply for a similar license for the same premises for the then next license year, without being obliged to produce any certificate from the electors, and, if the authorities deem such affidavit and application satisfactory, it shall be thereafter dealt with as if made in the form required by article 11. R. S., 836*a*.

15. In the cities of Quebec, Montreal, all certificates and applications for annual licenses shall be fyled in the office of the license commissioners on or before the thirty-first day of the month of December in each year.

In exceptional cases, the license commissioners may, in their discretion, allow the fyling of the certificate and application after the said date. R. S., 836*b*.

16. If the certificate refer to a house situate within the limits of the city, it, as well as the license, shall contain the designation of the ward and street where it is situated.

The license is of no effect outside the limits of such ward and street, except in the case provided for by article 38. R. S., 837.

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17. In all cities and towns, the signers of the certificate must be municipal electors residing or having their place of business in the polling subdivision in which is situated the house for which the license is applied.

The authorities charged with confirming the certificates shall not confirm the certificate of any applicant, if the majority of the municipal electors, residing or having their places of business in the polling subdivision in which is situated the house to which the license is to apply, object thereto, by petition, signed by them and produced before the clerk before the day fixed for the taking into consideration of the said certificate.

In case any applicant for the confirmation of a license certificate should, for any informality or other reason whatsoever, withdraw his petition after an opposition has been produced thereto, the said opposition may serve against any new demand made in the same year for the same establishment by the same person or by any other person in his interest, R. S., 838.

18. Such certificates (except those connected with applications for licenses in the city of Quebec and in the city of Montreal), shall be confirmed by a decision of the council of the municipality within the limits of which the house is situated, drawn in accordance with form E annexed to this law, and such confirmation is certified under the signature of the mayor and city clerk or secretary-treasurer of the council, and no certificate is valid unless so confirmed.

The granting or the refusal of the confirmation of the certificate is in the discretion of the council, saving the cases provided for by article 22, and the decision of the council is final. R. S., 839.

19. No such certificate, in municipalities other than the cities of Quebec and Montreal, shall be taken into consideration by the municipal council until it has been filed with the clerk or secretary-treasurer for at least eight days. R. S., 839*a*.

20. Before proceeding to consider the certificate or certificates, the council shall give public notice of the day and hour at which it will take such certificate or certificates into consideration.

21. The council, to which this certificate is presented, shall ascertain, by procuring such information as it may deem fit and proper, if the requisite number of duly qualified electors have signed the same. The council shall also cause the authenticity of the signatures attached thereto to be established under oath before one of its members, and, if the result of such double inquiry be, in whole or in part, unfavorable to the applicant, the confirmation applied for shall be refused. R. S., 841.

22. Such certificate shall be refused, if it be proved to the satisfaction of the council :

1. That the petitioner is a person of bad character, having already allowed or permitted drunkenness or disorder in his inn ; or

2. That such petitioner has already been condemned to a fine, for having sold intoxicating liquor in contravention of the provisions of this law, twice within the twenty-four months preceding the date of his petition ; or

3. That his demand for a license is opposed in writing by the absolute majority of the electors resident in the municipality or polling sub-

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division, as the case may be, in which he intends to open a tavern ; or

4. That he has been convicted of smuggling intoxicating liquors. R. S., 842.

23. If the council confirm the certificate contrary to the provisions of the law, the collector of provincial revenue may refuse to issue the license, and, if a *mandamus* be taken against him, may, in his defence, invoke all reasons of nullity that might have been urged against the confirmation of the certificate. R. S., 842*a*.

24. Independently of the right of municipal councils of places of summer resort to issue ordinary inn or hotel licenses, under the provisions of this law, licenses for hotels at such places may be issued in the course of any license year for any portion of such year comprised between the first of May and the thirty-first of October, upon a certificate to that effect confirmed by the municipal council of such place of summer resort, in accordance with the provisions of this law, *mutatis mutandis*, respecting applications for, and the confirmation of inn licenses :—each said certificate and license limiting the right of the holder thereof to the sale of intoxicating liquors to his *bonâ fide* boarders or guests, and to tourists or summer residents, to the exclusion of all other persons. No bar shall be allowed in any such hotel.

The keepers of such summer hotels are not subject to the provisions of article 107 respecting stabling and hay and grain for horses.

25. (1.) The confirmation of the certificate is granted, at the police court in Quebec, for the city of Quebec, by the judge of the sessions of the peace, the sheriff of the district of Quebec and the clerk of the peace for the said district or by any two of them ; and at the police court in Montreal, for the city of Montreal, by two judges of the sessions of the peace holding office and receiving emoluments as such and by the senior recorder, or by any two of them.

2. For the purposes of such confirmation, these magistrates and officers ars styled license commissioners.

3. It shall, however, be lawful for the Lieutenant-Governor in council, in the case of the absence, sickness or other inability to act for more than ten days of all or any of the license commissioners, to appoint a competent person or persons to temporarily perform such duties.

4. In the city of Quebec, the deputy clerk of the peace acts as clerk of the license commissioners.

5. In the city of Montreal, a clerk of the license commissioners is appointed by the Lieutenant-Governor in council, with a salary not exceeding one thousand dollars.

6. An assistant clerk shall be appointed by the license commissioners in the case of the sickness or absence of the clerk, to act as such.

7. The clerk or assistant clerk has power to administer the oath required in support of certificates, oppositions, petitions and other documents which may be used as evidence before the license commissioners.

8. Any person intending to apply for the confirmation of a certificate shall procure the form from the office of the clerk and pay a tax of two dollars in stamps affixed to such form if in the city of Montreal and seven dollars if in the city of Quebec. The license commissioners shall not recognize any such certificate not having the required stamps.

9. The clerk shall prepare a list and post it up in a conspicuous place in his office, open to the public: such list shall give the date of the entry

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of each application; the name, occupation and residence of the applicant; the situation of the house to which the license applies, and the day on which the application will be taken into consideration.

10. Subject to the provisions of article 26, the license commissioners must take the applications for licenses into consideration according to the date of their entry on the said list by the clerk, and the hour, if two or more are applied for on the same day, but not before eight days, nor later than fifteen days after the date of such entry: save when opposition is made to the confirmation of a certificate, and when, in special cases of the temporary inability of one of the said commissioners, the others may extend the delay for not more than ten days.

In any case, the decision shall be given within thirty days from the fyling of the declaration; or at least not later than the 28th of January following the date of the fyling thereof, provided the application shall have been fyled not loss than thirty days before such 28th of January; and a record of such decision shall be kept by the clerk of the commissioners.

11. In the case of an applicant who is already the holder of a license, when the commissioners see no objection to the confirmation of the certificate within the delay fixed by paragraph 10 of this article, they shall give their decision thereon as soon as such delay shall have expired.

12. Any person may oppose the application, and, if notice of the opposition have been given to the clerk, the latter shall, three days before the taking into consideration of such application, give notice thereof to the applicant and to the opposant if there be one.

13. Any person, producing before the license commissioners when the application is being taken into consideration, or who has previously produced before the clerk, verbally or in writing, the objections by him made to the granting of the confirmation of the certificate, has the right to be heard on the grounds and reasons of such objections or such other objections as may then be raised.

14. Paragraph 13 applies to every accredited representative of any association established for the purpose of supervising the proper execution of this law, and to every accredited representative of the incorporated associations of hotel-keepers and of licensed victuallers.

15. The commissioners shall hear such persons, as well as the applicant, within eight days of the production of the opposition, and, if necessary, adjourn the hearing from time to time until a decision is rendered upon the said opposition.

16. It shall be lawful for the commissioners at any time, when they may consider it necessary, to take evidence upon oath or affirmation, and for that purpose to summon before them and administer the oath to any person whomsoever.

17. Upon such hearing, as well as on every application which is not objected to, it is the duty of the commissioners, collectively or separately, whenever they may consider it useful or necessary, to make all the inquiries they deem proper to satisfy themselves of the qualifications of the applicant and of the truth of the facts put in issue.

18. The commissioners may, to that end, take into consideration all documents, hear, or cause to be heard by some fit person, all persons whom, from the personal knowledge of the commissioners or on the indication of the objecting parties or of others, they believe to be able to give information, and generally to resort to any other source of information.

19. When the commissioners wish to obtain information from the officers or members of the Quebec or Montreal police force respectively, they

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may order these officers to come before them and to make all such inquiries as may be deemed necessary.

20. When opposition is made to any application for the confirmation of a certificate, such confirmation, in the case of an applicant who has not previously been the holder of an inn license, can only be made, in Quebec by the judge of the sessions, the sheriff of the district of Quebec and the clerk of the peace of the said district, and in Montreal by the two judges of the sessions and the senior recorder sitting as license commissioners. If the applicant has already held such a license, the unanimous consent of the license commissioners is not requisite for the confirmation of the certificate, but all three commissioners in Quebec, and all three of them in Montreal, must hear the case.

21. Subject to the provisions of article 26, the granting of the confirmation of the certificate or the refusal thereof, for any cause whatever, is discretionary with the commissioners, except in the cases provided for in article 12, and their decision is final.

22. Whenever the confirmation of a certificate is refused, the commissioners shall, at the request of the applicant, make known to him the reasons of such refusal.

23. No license shall be granted by the collector of provincial revenue, unless there be deposited in his hands a certificate signed by the commissioners, who shall deliver to the applicant such certificate attesting the granting of such confirmation.

24. The clerk shall, from time to time, prepare a list of the certificates which the commissioners have confirmed and which are then in force, and keep it posted in the police court or in his office. R. S., 843.

25. It shall be lawful for the Lieutenant-Governor in Council to pay, out of the consolidated revenue fund of this Province to the sheriff of the district of Quebec and to the clerk of the peace for the said district, for their services as license commissioners, such annual salary as he may be pleased to fix.

26. In the matter of the confirmation of license certificates, the preference, as far as possible, is to be given to such applicants as were holders of licenses during the preceding year, whether for the same or for other premises, provided that, while they were so licensed, such persons have, in the opinion of the license commissioners, complied with all the requirements of the law.

Notwithstanding the provisions of the first paragraph of this article, preference shall be given, in respect of applications for hotel licenses, to premises specially constructed and fitted up to serve as hotels, provided such hotels have 25 rooms or more.

Subject to the provisions of the first paragraph of this article, as regards taverns and restaurants, preference is to be given, as far as possible and according to circumstances, to the premises occupied as taverns or restaurants during the year in which the application for confirmation of the certificate is made.

27. In the cities of Montreal and Quebec, whenever the requirements of article 108 are complied with, and no objection exists as to the personal character of an applicant for a hotel license, the commissioners shall confirm the certificate of such applicant as presented.

28. In the city of Montreal, the number of hotel and restaurant licenses is for the present limited to a maximum of four hundred; in the city of Quebec, to a maximum of one hundred and fifty; in the city of

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St. Henri, to a maximum of thirty-one, and in the city of Ste. Cunégonde, to a maximum of twenty-three, respectively; and these numbers shall not be exceeded hereafter, until the population of the said cities shall have so increased that an increase in the number of hotel and restaurant licenses therein may be made in such way that there shall never be more than one such license to every thousand souls of the population of each of the said cities; and this proportion shall be adhered to thereafter. R. S., 843*a*.

29. A certificate for the obtaining of a license, if such certificate has been confirmed before the first of May in any year, shall lapse unless the license is taken out before the thirtieth day of June; and, if it has been confirmed after the first of May, it shall lapse if the license is not taken out within sixty days after such confirmation.

In the cities of Quebec and Montreal, the license commissioners may, on the lapsing of a certificate, confirm the certificate of another person so as to make up the number of licenses fixed by article 28. R. S., 843*b*.

30. On each confirmation of a certificate for the purpose of obtaining a license for the cities of Quebec or Montreal, the sum of eight dollars is paid to the corporation of each of such cities; and a sum not exceeding twenty dollars may be demanded and received by other corporations for the same object, within the limits of their jurisdiction.

The preceding provision does not deprive cities and towns of the rights which they may have by their charters or by-laws. R. S., 845.

31. The certificates required by this law are deposited in the office of the proper collector of provincial revenue, who shall not issue any license before it is proved, to his satisfaction, that the sums due thereon in virtue of article 64 have been paid. R. S., 847.

32. No municipal councillor, being, at the same time, a brewer, distiller or dealer in intoxicating liquors, or proprietor of a house of public entertainment, shall sign the certificate mentioned in article 11, under a penalty of twenty dollars for each contravention. R. S., 850.

33. No person shall, knowingly, sign such certificate, unless duly qualified so to do, under a penalty of twenty dollars for each contravention. R. S., 851.

34. Applications for inn licenses in non-organized territory must be submitted to the Provincial Treasurer, and are subject to his approval. R. S., 852.

35. None of the licenses hereinbefore mentioned shall be granted to a grocer, or person keeping a shop or store for the sale of groceries, provisions, sweatmeats or fruits within the limits of a city or town. R. S., 853.

SECTION V.

TRANSFERS OF LICENSES.

36. (1) In the cities of Quebec and Montreal, the formalities required for the transfer of a license are the following:

(*a*) The applicant for the transfer of the license of a licensee who has died or is going or has gone out of business, shall fyle with the clerk

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of the license commissioners a petition applying for the transfer, signed by himself and by the transferor or his legal representatives, which petition shall be annexed to the usual form of application provided for by articles 11 and 12. The applicant for the transfer shall further comply with all the formalities required by article 37, and the license commissioners shall take the application of the transferee into consideration and confirm or reject it in the same manner as provided by article 25 with respect to applications for license certificates.

(*b*) For such transfer in the cities of Quebec and Montreal, the tax shall be twenty five dollars payable in stamps to be affixed upon the form of such transfer when the same is applied for, and the license commissioners shall not recognize any such application not having the required stamps; if the transfer is granted, a further sum of twenty-five dollars shall be paid in stamps affixed upon the said form.

2. In all parts of the Province, other than those above mentioned, if the licensee leaves his house or dies before the license expires, he or his representatives, as the case may be, may transfer such license to another.

3. Save in the case of an abandonment of property, or of the death of the licensee, no transfer of a license shall be made until after the expiration of forty days from the date upon which the license was delivered by the collector of provincial revenue.

4. In the case of the death of a licensee or of a voluntary or judicial abandonment of property on his part, a delay of thirty days is granted to his heirs or representatives, or to the curator of his estate, during which delay the license continues in force, in order to give them opportunity to apply for a transfer.

5. The transferee thereof, in all cases, may exercise all the rights which accrued thereunder to the original licensee in the house therein described, or, if such house be situated within an organized territory of the Province, in any other building situated within the limits of the municipality, which the judge of the sessions, the sheriff of the district of Quebec and the clerk of the peace for the said district at Quebec or the two judges of the sessions of the peace and the senior recorder at Montreal or the majority of them, or, in any other municipality, the municipal council, as the case may be, approve of, and which is set forth in the certificate referred to in article 37. R. S., 848.

37. This transfer has its effect, only if the transferee, in case the house in question be situated in question be situated in organized territory, deliver the certificate to the collector of provincial revenue, which the licensee was himself obliged to furnish; and, in the cities of Quebec and Montreal, pay the excess of duty which may be exigible in consequence of the difference of the rent or annual value, between the house occupied by the original licensee and the one occupied by the transferee.

The transfer shall be written on the back of such license by the collector of provincial revenue, and the transferee shall comply with all the formalities which were incumbent on the original applicant.

The transfer shall be so made within three months from the death of the licensee or from his abandonment of his house, failing which the license is of no avail. R. S., 849.

38. The provisions of this law, which apply to the transfer of a license from one person to another, also apply in the case where the holder of a license desires to change his domicile and to transfer his license to another part of the municipality for which he has obtained it. R. S., 849*a*.

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SECTION VI.

RESTAURANT LICENSES.

39. The conditions and formalities imposed, relating to the certificates required to obtain a license for an inn, apply *mutatis mutandis* to restaurant licenses, including the provisions established for the cities of Quebec and Montreal.

No restaurant license shall, however, be granted elsewhere than in cities or towns. R. S., 854.

SECTION VII

BEER AND WINE LICENSES.

40. The conditions and formalities imposed, relating to the certificates required to obtain a license for an inn or a restaurant, as the case may be, including the provisions established for the cities of Quebec and Montreal, and the obligations and penalties relating to the holder of an inn or a restaurant license, as the case may be, apply *mutatis mutandis* to licenses for the exclusive sale of wine, ale, beer, lager-beer, porter and cider. R. S., 854*a*.

SECTION VIII.

TEMPERANCE HOTEL LICENSES.

41. The conditions and formalities required by law for obtaining a license for an inn, apply *mutatis mutandis* to temperance hotel licenses, including the provisions established for the cities of Quebec and Montreal.

Upon a petition presented by the superintendent or manager of any railway company, the Lieutenant-Governor in Council may, however, authorize the proper collector of provincial revenue to issue to the person indicated in such petition, a temperance hotel license within the limits of any municipality in which there is a station of such railway company, but only one such license can be issued in each such municipality; and the conditions and formalities required by the first clause of this article do not apply to the issue of temperance hotel licenses so granted. R. S., 855.

SECTION IX.

RAILWAY BUFFET AND WATERING PLACE HOTEL LICENSES.

42. Upon a petition presented by any railway company or any inland navigation company, the Lieutenant-Governor in Council may authorize the proper collector of provincial revenue to deliver to the person indicated a license to sell intoxicating liquors, at the railway station therein mentioned by such railway company, or at any summer hotel situate at any watering place in this province belonging to the said navigation company and kept by it, to travellers upon such railway or to persons boarding at such hotels, and to no others. R. S., 858.

43. With the exception of the provisions contained in articles 11 to 34, inclusively, and also the provisions hereinafter mentioned, relative to the accommodation which must be provided for travellers by the master of an inn, to the prohibition to sell intoxicating liquors, to keeping

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the bar closed during certain days and certain hours, also to the obligation to receive and accommodate travellers, the other provisions of this law shall *mutatis mutandis* apply to licenses of railway buffets, in so far as they are not incompatible with such licenses.

One person only shall be licensed for each station. R. S., 859.

SECTION X.

DINING CAR LICENSES.

44. Upon a petition presented by any railway company the Lieutenant-Governor in council may authorize the issue to the said company of one or more dining car licenses.

Each such license shall authorize the said company to sell in a dining or buffet car the liquors permitted to be sold under a beer and wine license.

All sales shall be confined to *bonâ fide* travellers upon the train to which the said dining or buffet cars are attached.

No sale shall be made when the train is at or within the limits of any station, nor shall any liquors at any time be sold to officers, employees or servants of the company or to any one on their behalf. R. S., 855*a*.

SECTION XI.

STEAMBOAT BAR LICENSES.

45. Steamboat bar licenses are granted simply upon payment to the proper collector of provincial revenue of the required duties and fees. R. S., 855.

SECTION XII.

CLUB LICENSES.

46. (1.) Licenses for the sale of intoxicating liquors in clubs are granted only to clubs incorporated by letters-patent or by special charter.

2. Subject to paragraph 4 of this article, such licenses in cities and towns, and in the banlieue of Quebec, are granted by the proper collector of provincial revenue simply upon payment to him of the required duties and fees.

3. Subject to paragraph 4 of this article, such licenses in other municipalities are granted by the said officer upon such payment and after the conditions and formalities imposed, relative to the certificates required to obtain a license for the sale of intoxicating liquors by retail in shops, have been *mutatis mutandis* complied with.

4. Before any club license is issued, the constitution and the rules and regulations of such club must be submitted to the Provincial Treasurer, who may refuse to grant the license if he see fit.

5. Such licenses are required to be taken out even by clubs in which the cost of the intoxicating liquors in included in the annual subscription of the members. R. S., 857.

SECTION XIII

RETAIL LIQUOR LICENSES

47. The conditions and formalities relative to the certificate required to obtain an inn license are in like manner applicable *mutatis mutandis*

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to the obtaining of licenses for the sale, by retail, or intoxicating liquors in shops, including the provisions enacted for the cities of Quebec and Montreal, except that the number of electors required upon the certificate shall be limited to three. R. S., 856.

SECTION XIV.

WHOLESALE LIQUOR LICENSES.

48. Licenses for the sale by wholesale of intoxicating liquors are granted in municipalities governed by the Municipal Code in the same manner, upon the same conditions, and with the same formalities as retail liquor licenses, as determined in the preceding article, and are subject to the provisions of articles 561 and 563 of the Municipal Code.

Such license gives the holder thereof the right to employ and send commercial travellers throughout the Province to solicit and take orders in his interest, without any additional license being required therefor, provided such travellers have no fixed office or place of business in the Province other than that for which the license is issued.

SECTION XV.

WHOLESALE AND RETAIL LIQUOR LICENSES.

49. A license to sell intoxicating liquors by wholesale and retail shall be issued to any applicant who has complied with the conditions and formalities enacted in article 47 respecting retail liquor shop licenses, and who has paid to the proper collector of provincial revenue the duties and fees fixed for wholesale liquor licenses.

SECTION XVI.

SAMPLE AND COMMISSION LICENSES.

50. (1.) Sample and commission licenses are issued simply upon payment to the proper collector of provincial revenue of the required duties and fees. A sample and commission license gives the holder thereof the right to do business throughout the Province.

2. If the applicant for such license has no fixed office or place of business in this Province, the license shall be issued by the collector of provincial revenue of the district of Quebec, or by either of the collectors of the districts of Montreal East and Montreal West, at the option of the applicant.

3. If the aplicant has a fixed office or place of business in the Province, the license shall be issued by the collector of provincial revenue of the district in which such office or place of business is situate. R. S., 856a.

SECTION XVII.

BOTTLERS' LICENSES.

51. Bottlers' licenses are issued in municipalities governed by the Municipal Code in the same manner, upon the same conditions, and with the same formalities as retail liquor licenses as determined in article 47, and are subject to the provisions of articles 561 and 563 of the Municipal Code.

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SECTION XVIII.

LICENSES FOR THE SALE OF CIDER AND NATIVE WINE.

52. Licenses for the sale of cider manufactured by the vendor, and for the sale of native wine manufactured by the vendor from grapes or other fruit grown and produced in the Dominion of Canada, are granted simply upon payment to the proper collector of provincial revenue of the required duties and fees, save in the case provided for by the second clause of paragraph 20 of article 2.

Manufacturers of native wine are allowed to add to the native grapes twenty-five per cent. of imported grapes, raisins or currants. R. S., 857*b*.

SECTION XIX.

SPECIAL LIQUOR LICENSES.

53. A special license for the sale of intoxicating liquors at large gatherings, such as picnics of national or trade associations, and races, may be granted by the Provincial Treasurer to societies, clubs and corporations having control of the same, or to the person recommended by them, at such rates and conditions and for such time as may be determined by the said Provincial Treasurer.

No intoxicating liquors shall, however, be sold or given away by any person whomsoever, in village or rural municipalities, in the room or on the grounds where any auction sale, ploughing match, exhibition or political meeting is being held, nor during municipal or school elections, excepting beer and wines to be used at table for meals, under a penalty not exceeding fifty dollars, and, in default of payment, an imprisonment not exceeding one month. R. S., 857*a*.

SECTION XX.

DUTIES OF CLERKS AND SECRETARY-TREASURERS.

54. The clerk or secretary-treasurer of every city, town or local municipality in this Province, and the clerk of the license commissioners in the cities of Quebec and Montreal shall, on the first day of the months of April, July, October and January in each year, transmit to the treasury department a statement under his oath of office of all certificates for obtaining inn, temperance hotel, restaurant, liquor shop and club licenses under this law, which during the three months then immediately preceding have been confirmed by the council or the commissioners, of which such clerk or secretary-treasurer is the officer; and, in default thereof, or in the event of any omission or false statement, the said clerk or secretary-treasurer shall be liable to a fine of twenty dollars and of two dollars for each day he neglects so to do.

If, during such three months, no such certificates have been confirmed, such clerk or secretary-treasurer shall, under a like penalty, be obliged to make a return to that effect.

This article applies also to the resolutions of municipal councils for the obtaining of licenses, granted under article 60, in municipalities where a prohibitory by-law is in force. R. S., 859*a*.

SECTION XXI.

LICENSES WHERE PROHIBITORY BY-LAWS ARE IN FORCE.

55. Whenever a municipal by-law shall have been passed and confirmed as by law required, prohibiting the sale of intoxicating liquors

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within the limits of the jurisdiction of any municipal council, and a copy of such by-law has been transmitted to the collector of provincial revenue entitled to the same, the collector of provincial revenue is forbidden to issue any of the licenses hereinbefore-mentioned for the sale of such liquors, excepting steamboat bar licenses, licenses of railway buffets and dining car licenses, which licenses are not affected by the present restriction.

Notwithstanding the quashing, by judgment of a court of justice, of such a by-law, the collector of provincial revenue shall not grant any such licenses, within two months from the rendering of such judgment unless such judgment is final. R. S., 860.

56. In municipalities, in which there exists a by-law prohibiting the sale of intoxicating liquors, or where there is no person licensed to retail spirituous liquors, the sale of such liquors is permitted by the person licensed for that purpose, as provided in article 60, for medicinal purposes only or for use in divine worship, on the certificate of a physician or of a clergyman, and not otherwise. R. S., 861.

57. Any person, licensed under article 60, who sells any quantity whatsoever of intoxicating liquors, without the certificate required by articles 56 and 58, or who sells any such liquor in violation of the provisions of article 144 or who allows any such liquor sold by him to be drunk in his establishment or its dependencies, or who sells any such liquor outside the place and its dependencies for which the license has been obtained, shall be liable to the penalties imposed by article 137. R. S., 861*a*.

58. Such certificate can be given by a physician only to a patient under his immediate care, or by a clergyman only to a person whose spiritual adviser he is, *bonâ fide*, under penalty of a fine of thirty dollars for each contravention of this provision. R. S., 862.

59. Not more than three half pints, imperial measure, shall, at any one time, be sold in virtue of such certificate, and no liquor, so sold, shall be allowed to be drunk on the premises, under the penalties enacted by article 137. R. S., 863.

60. The sale of intoxicating liquor, in the cases mentioned in article 56, is confined to one person in each municipality; such person to be appointed for that purpose by a resolution of the municipal council, a certified copy of which must be deposited with the collector of provincial revenue of the district, who, on receipt thereof and of the license duties as hereinafter provided, shall issue to the person in such resolution a license to sell for medicinal purposes or for use in divine worship only. R. S., 864.

61. The license mentioned in article 60 shall not be granted to a proprietor of a temperance hotel, nor issued for a building used as a temperance hotel. R. S., 864*a*.

62. The person, so licensed, is bound to make a report, to the collector of provincial revenue, sworn to before a justice of the peace, on the first of every month, showing the names of the persons to whom he has sold liquor during the previous month, the quantity sold in each case, and upon whose certificate the sale was made, which certificate shall accompany the report.

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The violation of any of the provisions of this article shall subject the person, so contravening, to a penalty of twenty dollars for each contravention. R. S., 865.

63. The licenses mentioned in article 60 are further subject to such regulations as may be adopted by the Lieutenant-Governor in Council. R. S., 865*a*.

SECTION XXII.

FEES AND DUTIES PAYABLE ON LICENSES ISSUED UNDER PART I OF THIS LAW.

64. Preliminary to the granting of any of the licenses mentioned in this article, three shall be paid to the collector of provincial revenue by the person applying therefor, in addition to the duties comprised in the following tariff, a fee of one dollar, saving for hotel, tavern, temperance hotel, restaurant, retail liquor shop, wholesale liquor, and wholesale and retail liquor, licenses, for each of which a fee of five dollars shall be paid, of which three dollars shall belong to the Crown, and two dollars shall be retained by the collector.

TARIFF OF DUTIES ON LICENSES.

1. LICENSES FOR THE SALE OF INTOXICATING LIQUORS.

1. On each license to keep an inn or restaurant, and for the sale therein of intoxicating liquors :
   - *a.* In the city of Montreal, four hundred dollars, if the annual value or rent of the premises for which the license is required, be four hundred dollars or less ; — six hundred dollars, if the annual value or rent be over four hundred dollars and less than eight hundred dollars ; — and eight hundred dollars, if the annual value or rent be eight hundred dollars or more ;
   - *b.* In the city of Quebec, two hundred and fifty dollars, if the annual value or rent be two hundred dollars or less ; — three hundred dollars, if the annual value or rent be over two hundred dollars and less than four hundred dollars ; five hundred dollars, if the annual value or rent be four hundred dollars and less than eight hundred dollars — and six hundred and fifty dollars, if the annual value or rent be eight hundred dollars or more ;
   - *c.* In every other city, two hundred dollars ;
   - *d.* In every town, one hundred and eighty dollars ;
   - *e.* In every village, regulated under the authority of the Municipal Code, one hundred and fifty dollars ;
   - *f.* In every section of organized territory, outside of a city, town or village, one hundred and twenty-five dollars ;
   - *g.* In every non-organized territory, ninety dollars ;

2. On each license for the sale of intoxicating liquors in a club :
   - *a.* In the city of Montreal three hundred dollars ;
   - *b.* In the city of Quebec, two hundred dollars ;
   - *c.* In every other part of the Province, one hundred dollars ;

3. On each license for the sale of intoxicating liquors in a railway buffet.

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a. In the city of Montreal, four hundred dollars, if the annual value or rent of the premises, for which the license is required, be less than four hundred dollars ; — six hundred dollars, if the annual value or rent be four hundred dollars and less than eight hundred dollars ; — and eight hundred dollars, if the annual value or rent be eight hundred dollars or more :

b. In the city of Quebec, three hundred dollars, if the annual value or rent be less than four hundred dollars ; — and five hundred dollars, if the annual value or rent be four hundred dollars or more ;

c. In every other city, two hundred dollars ;

d. In every town, one hundred and fifty dollars ;

e. In every other part of the Province, one hundred and twenty dollars ;

4. On each dining car license, authorizing the sale of beer and wine on railway trains, fifty dollars ;

5. On each license to sell, exclusively, wine, ale, beer, lager beer, porter and cider, seventy-five per cent of the amount of license duty required to keep an inn or a restaurant, as the case may be, in the locality for which such license is applied for ;

6. On each license for a steamboat bar, for the sale therein of intoxicating liquors, three hundred dollars ;

7. On each license for the sale of intoxicating liquors at the mines or in any mining district or division, such sum as the Lieutenant-Governor in Council may determine, provided that, in no case, shall such sum be less than one hundred and twenty-five dollars ;

8. On each retail liquor shop license :

a. In each of the cities of Montreal and Quebec, twenty-five dollars, and one hundred and twenty-five per centum of the annual value of rent of the premises for which the license is required ; provided that, in no case, shall the duties on such license be less than two hundred dollars or more than four hundred dollars ;

b. In every other city, two hundred dollars ;

c. In every town, one hundred and sixty dollars ;

d. In every other part of organized territory, one hundred and twenty-five dollars ;

e. In every non-organized territory, seventy dollars ;

9. On each wholesale liquor, and wholesale and retail liquor license :

a. In each of the cities of Montreal and Quebec, twenty-five dollars and one hundred and twenty-five per centum of the annual value or rent of the premises for which the license is required ; provided that, in no case, shall the duties on such license be less than two hundred and eighty dollars or more than five hundred and twenty dollars ;

b. In every other city, two hundred and twenty-five dollars ;

c. In every town, two hundred dollars ;

d. In every other part of the province, one hundred and sixty dollars ;

9*a*. On each license granted to a chemist or druggist for the sale by wholesale of intoxicating liquor to chemists or druggists only, one hundred and fifty dollars.

10. On each license to sell intoxicating liquors, by sample or on commission :

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a. If the licensee has no fixed office or place of business in the Province, four hundred dollars ;
b. If the licensee has a fixed office or place of business in the Province, the rate of the duty shall be the same as enacted for wholesale liquor licenses ;

11. On each license for the sale of fermented liquors bottled by the holder of such license :
1. If the bottler is at the same time a brewer :
a. For the island of Montreal, two hundred dollars ;
b. For the city and county of Quebec, two hundred dollars ;
c. For any other county, one hundred and fifty dollars ;
2. If he is not a brewer :
a. In the cities of Montreal and Quebec, one hundred and twenty-five dollars ;
b. In any other county outside of the cities of Montreal and Quebec, ninety dollars ;
3. For each vehicle used by brewers and bottlers, ten dollars ;

12. On each license to sell liquors fer medical purposes or for use in divine worship, in municipalities where a prohibitory by-law is in force :
a. In every city, two hundred dollars
b. In every town, one hundred and sixty dollars ;
c. In every part of organized territory outside of a city or town, one hundred and twenty-five dollars ;
d. In every non-organized territory, seventy dollars ;

13. On each license to sell apple cider or native wine manufactured by the vendor :
a. In the city of Montreal, eighty dollars ;
b. In the city of Quebec, sixty dollars ;
c. In every other city, forty dollars ;
d. In every town, twenty-five dollars ;
e. In every village, fifteen dollars ;
f. In any other part of the Province, ten dollars.

II. TEMPERANCE HOTEL LICENSES.

14. On each license to keep a temperance hotel :
a. In the city of Montreal, fifty dollars ;
b. In any other organized territory, ten dollars ;
c. In non-organized territory, five dollars. R. S., 878.

SECTION XXIII.

LICENSES IN PLACES UNDER THE CANADA TEMPERANCE ACT.

65. No license for the sale of intoxicating liquors shall be issued or take effect within any county, city, town, village, township, or other municipality in the Province of Quebec, within which any by-law for prohibiting the sale of liquor under the Canada Temperance Act is in operation, except such licenses as are referred to in sub-sections 3, 4 and 8 of section 99 of the said act. R. S., 879.

66. Every collector of provincial revenue, appointed under the provisions of this law, shall, within the limits of the district for which he is appointed, exercise and discharge all his powers and duties for the enforcement of the provisions of the second part of the Canada Temperance Act, as well as of this law, so far as the same apply, within the limits of any county, city, town, village, township or other municipality, in

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which any by-law under the said Canada Temperance Act is in operation. R. S., 880.

67. A wholesale license, to be obtained under and subject to the provisions of this law, so far as the same may apply, shall be necessary in order to authorize and make lawful any sale of liquor in the quantities allowed by subsection 8 of section 99 of the Canada Temperance Act. R. S., 881.

68. The sale of intoxicating liquors without license, in municipalities where the Canada Temperance Act is in operation, shall be held to be a contravention of the provisions of this law. R. S., 882.

69. The following duties on licenses, issued under and in pursuance of subsections 3, 4 and 8 of section 99 of the Canada Temperance Act, shall be payable to the collector of provincial revenue, previous to the granting of the different licenses, viz :

1. On each druggist's or other vendor's license for the sale of liquor, for sacramental, medicinal and mechanical purposes :
   a. In cities, two hundred dollars ;
   b. In towns, one hundred and sixty dollars :
   c. In all other municipalities, one hundred and twenty-five dollars ;
   d. In unorganized territory, fifty dollars ;
2. On each wholesale license :
   a. In cities, two hundred and twenty-five dollars ;
   b. In towns, two hundred dollars ;
   c. In all other parts of the Province, one hundred and sixty dollars. R. S., 883.

70. All sums received for duties on such druggists' or other vendors' licenses and on wholesale licenses issued in municipalities in which the Canada Temperance Act is in operation, shall be paid by the collector of provincial revenue to the Provincial Treasurer and shall form part of the consolidated revenue fund. R. S., 884.

SECTION XXIV

PROVISIONS RESPECTING VALUATION

71. The rent or annual value, fixing the rate of licenses under the provisions of article 64, is taken from the valuation roll for municipal purposes then in force, subject to the provisions of article 75. R. S., 885.

72. To every application for license, the duty whereof is regulated by the amount of the rent or annual value, there must be annexed a certificate of the valuation, contained in the valuation roll, of the house and dependencies or premises for which such license is sought, which valuation shall include, not only the rooms used for the purposes required for such license, but also all other rooms in the same house and dependencies, which are occupied by the licensee or intended so to be for any purpose whatever, delivered by the city clerk or secretary-treasurer, who is bound to deliver such certificate, whenever thereto required, under a penalty of fifty dollars for each contravention.

In cases in which there is no communication from within between the parts of a building used for the purposes of the license and the parts of the same building used for other purposes, the valuation shall include

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only the parts of the building which are intended to be used for the purposes of the license. R. S., 886.

73. If the certificate of the secretary-treasurer, clerk or treasurer of the municipality, annexed to the application for license, does not give the real actual rent or annual value, and has been obtained owing to incorrect information supplied to the assessors or valuators, the applicant presenting such certificate shall be liable to a penalty of not less than one hundred dollars, and not exceeding two hundred dollars, and imprisonment of three months in default of payment, and the license commissioners shall further have power, at any time, to cancel the license granted upon such application. R. S., 886*a*, *in part*.

74. Every assessor or valuator against whom it is proved that he is cognizant that the rent or annual value is understated in such certificate, and that he is a party thereto, also incurs a penalty of not less than one hundred dollars, and not exceeding two hundred dollars, and an imprisonment of not less than three months nor more than six months, in default of payment. R. S., 886*a*, *in part*.

75. In any case in which the collector of provincial revenue is of opinion that the valuation mentioned in articles 71 and 72 is too low, he has the right to value the premises or to have them valued by a competent person; and the valuation so obtained shall be submitted to the license commissioners, who, after hearing the parties and their proof in a summary manner shall decide thereupon ; such decision shall be final and shall not be susceptible of being petitioned against by *certiorari* or of appeal or otherwise ; and in the event of the discovery of any fraud, the parties guilty thereof shall incur the penalties prescribed by the provisions of articles 3 and 4, and may be prosecuted thereunder.

SECTION XXV.

POWERS OF THE LIEUTENANT-GOVERNOR AS TO THE REDUCTION OF THE DUTY ON LICENSES.

76. The Lieutenant-Governor in Council may, by regulation, when and so often as he deems it expedient, reduce the rate of duty on licenses mentioned inarticle 64, provided that such rate be not below the rate imposed by the fifth section of the Imperial Act, fourteenth George III, chapter eighty-eight. R. S., 887.

77. The duties imposed by this law on licenses for inns, restaurants, steamboat bars, railway buffets or liquor shops, include those imposed by the said Imperial Act ; but, should the said act be hereafter repealed, such repeal shall not have the effect of reducing the amount of such duties. R. S., 889.

SECTION XXVI.

DUTIES OF COLLECTORS OF PROVINCIAL REVENUE AS REGARDS THE ISSUING OF LICENSES.

78. Under the restrictions and exceptions hereinabove imposed, it is the duty of each collector of provincial revenue, on proof being furnished to him of the fulfilment of all the formalities, on payment being made to him of the requisite duties for the issue of the licenses hereinabove

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mentioned, and on application being made to him, to issue, within the limits of his jurisdiction, any of the above licenses.

The same rule applies to the officer named for the issuing of tavern licenses at the mines. R. S., 892.

SECTION XXVII.

PENALTIES.

§ 1. — *Penalties for selling intoxicating liquors in a mining division.*

79. The Lieutenant-Governor in Council may, by proclamation issued and published for that purpose in the usual manner, when mines are in operation and when the public interest requires the same, declare that this paragraph shall apply to any or all the mining divisions of the Province or to any part thereof; and, after such proclamation, whosoever, in such mining division or part thereof, sells or barters any intoxicating liquors, within a radius of five miles from any mine that is being worked, without having first obtained a license for that purpose, from the inspector of the division, under the mining act, is liable to the following penalties, to wit: for a first offence, a fine not less than seventy and not more than one hundred dollars, ; for a second offence a fine of two hundred dollars, and, in either case, in default of payment, imprisonment for a period of three months, and for a third offence, imprisonment for three months without the option of a fine. R. S., 893.

80. Whosoever, in such mining division or part thereof, by himself or his clerk, servant or agent, exposes or keeps for sale, directly or indirectly, under any pretext, or by any device, sells or barters for any consideration whatsoever or gives to any other person any intoxicating liquor or any mixed liquor part of which is intoxicating, incurs the penalties enacted by article 84. R. S., 894.

81. Whosoever, in the employment or on the premises of another, exposes or keeps for sale, or sells, or barters, or gives intoxicating liquor, in violation of articles 79 or 80, is deemed to be equally guilty with his principal and incurs the same penalties. R. S., 895.

82. In such mining division or part thereof, the delivery of intoxicating liquor of any kind, in or from any building, booth or place, other than a private dwelling house or its dependencies, or in or from any dwelling house or its dependencies, if any part thereof be used as an inn, eating house, grocery, shop, or other place of common resort, — such delivery in either case, being to any one not *bonâ fide* a resident therein, — is *primâ facie* deemed sufficient evidence of and punishable as a sale and barter of intoxicating liquor in violation of this paragraph. R. S., 896.

83. Any delivery of intoxicating liquor in or from a private dwelling house, or its dependencies, or in or from any other building or place whatever to any one, whether resident therein or not, with payment or promise of payment, either express or implied, before, on or after such delivery, is *primâ facie* deemed sufficient evidence of and punishable as a sale and barter of intoxicating liquor in violation of this paragraph. R. S., 897.

§ 2. — *Penalties for illicit sale of intoxicating liquors and for certain fraudulent practices.*

84. Subject to the provisions of article 79, any one who keeps, with-

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out a license to that effect still in force, an inn, restaurant, steamboat bar, railway buffet, or liquor shop for the sale, by wholesale or retail, of intoxicating liquors or who sells, in any quantity whatsoever, even by sample or on commission, intoxicating liquors, in any part whatsoever of the Province, shall be liable for the first contravention, to a fine of not less than thirty dollars nor more than one hundred dollars in the discretion of the court, and, in default of payment of the said fine, to imprisonment in the common gaol for a period of three months; if convicted thereof a second time, such person shall be liable to a fine of not less than one hundred dollars nor more than one hundred and fifty dollars and, in default of payment, to imprisonment for a period of three months: and for the third and every subsequent offence the offender shall be condemned to an imprisonment of not less than three nor more than six months, without the option of a fine. R. S., *in part.*

85. Any one who keeps a temperance hotel, without a license to that effect, still in force, as by law prescribed, is liable for each contravention, to a fine of not less than twenty dollars nor more than forty dollars, in the discretion of the court. R. S., 898, *in part.*

86. Any railway company or person in charge of a dining or buffet car on a railway train, who sells intoxicating liquors in any part whatsoever of this Province, without a license to that effect still in force, or whilst holding a dining car license, sells other intoxicating liquors than those allowed by such license, or otherwise contravenes the provisions of this law, shall be liable for each offence to a fine of one hundred dollars. R. S., 898*a*.

87. Every agent or commercial traveller selling intoxicating liquors in this Province in the interest of a person or firm, whose principal place of business is beyond the limits of the Province, is required to take out a sample or commission license, whether such agent or traveller be employed by person or firm at a fixed salary or on commission, under a penalty of one hundred and fifty dollars or an imprisonment of three months for each contravention.

88. Any one holding a retail liquor shop license, or a wholesale and retail liquor license, and who sells in such shop, or in any place whatsoever, within the limits of this Province, any intoxicating liquors in quantity less than one imperial pint, of one and the same kind of liquor, at one and the same time, or holding only a wholesale liquor shop license, sells in such shop, or within the above-mentioned limits, any of said liquors, in quantity less than two imperial gallons, or one dozen bottles, containing not less than one imperial pint each, of one and the same kind of liquor, at one and the same time, the whole of the said two gallons or one dozen bottles to be removed at once from the premises, shall become liable to the penalties enacted by article 137. R. S., 900, *in part.*

89. Any person holding a license under this law, who sells, in any quantity whatsoever, intoxicating liquors, outside the place and its dependencies, or, in the case of bottlers, outside of the county, for which the license has been obtained, saving always the rights conferred by articles 47, 48, 49, and 50 upon holders of wholesale or retail licenses and sample and commission licenses, in respect of commercial travellers, is liable to the penalties enacted by article 137. R. S., 900, 901, *in part.*

90. Every licensee for the sale of intoxicating liquors in shops, but

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not for keeping a house of entertainment, who does not take the measures or precautions necessary to prevent intoxicating liquors, sold therein, from being drunk in the said shop or its dependencies, either by the purchaser, or by a person not residing with or in the employ of the vendor, shall be liable to the penalties enacted by article 137.

Every such person, in whose shop or dependencies thereof intoxicating liquors are drunk either by the purchaser or by a person not residing with, or in the employ of the vendor, shall be deemed not to have taken the measures or precautions necessary to prevent such infraction.

Proof that liquors are frequently or habitually sold in the dependencies of the shop of such person is deemed to be proof that such person has knowledge of and allows such infractions. R. S., 901, *in part.*

91. Any person holding a license under this law, who sells intoxicating liquor to any one under eighteen years of age, or in whose place of business or the dependencies thereof, intoxicating liquor is so sold by any person in his employ or acting for him, is liable to the penalties enacted by article 137.

No intoxicating liquor shall at any time be sold to any person under eighteen years of age in a club licensed under article 46.

In prosecutions for the sale of liquor to a person alleged to be under eighteen years of age, the burden of proof that such person is fully eighteen years of age shall fall upon the defendant. R. S., 901 *in part.* 921 *in part.* 921*a.*

92. Any person under eighteen years of age, found in the drinking bar of any hotel or restaurant and not giving a satisfactory account of himself, shall be liable to a fine not exceeding two dollars, and, in default of payment, an imprisonment not exceeding two weeks. R. S. 921, *in part.*

93. Any person under eighteen years of age, who is convicted of purchasing intoxicating liquor for his own use, shall be condemned to a fine not exceeding ten dollars, and, in default of payment, to an imprisonment not exceeding one month.

94. If any person, holding a license, purchases or receives from any person, any wearing apparel, tools, implements of trade or husbandry, fishing gear, household goods, furniture or provisions, either by way of sale or barter, directly or indirectly, the consideration for which, in whole or in part, is any intoxicating liquor or the price thereof, or receives from any person any goods in pawn, any judge of the sessions, recorder or police magistrate, or any two justices of the peace, on sufficient proof of the facts being made on oath before him or them, may issue his or their warrant for the restitution of all such property, and for the payment of costs; and, in default thereof, the warrant shall contain directions for levying by sale of the offender's goods to the value of such property so pawned, sold, or bartered, and costs, and the offender shall also be liable to a penalty not exceeding twenty dollars. R. S., 901*a.*

95. The purchaser of intoxicating liquors in a licensed shop is forbidden to drink, or cause any one to drink, or to allow the said liquors to be drunk, in the shop where the same have been purchased or in the dependenices thereof, under a fine of not less than five dollars and not more than twenty dollars for each contravention. R. S., 902.

96. Every person licensed to keep a temperance hotel, who allows, or

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who does not take the measures or precautions necessary to prevent intoxicating liquors being drunk in his house or dependencies, incurs a fine of twenty dollars for each contravention. R. S., 903.

97. Every proprietor or master of a steamboat or vessel holding a license under this law, who allows his steamboat bar to remain open, or who sells or allows intoxicating liquors to be sold on board, during the time that such steamboat or vessel is staying in a port, or at a wharf, or at any place of disembarkation, is liable to a fine of one hundred dollars for each contravention. R. S., 904.

98. Any person, not being the holder of any one of the licenses hereinabove mentioned, who exhibits, causes to be exhibited or allows the exhibition, in or on any part of his house or its dependencies, or his vehicles, of any sign, inscription, painting, or any other sign whatsoever, of a nature to induce the public or travellers to believe that the sale of intoxicating liquors is authorized therein in any quantity, and that he is the holder of a license to that effect, shall be liable to a fine of thirty dollars for each contravention.

The same penalty is incurred by any licensee, who, by any of the means mentioned in this article, seeks to induce the public or travellers to believe that he holds a different license from that which has been granted to him. R. S., 905.

99. Any one, not being a licensee as hereinabove mentioned, who keeps or allows to be kept in his house or dependencies, in storage or otherwise, for the purpose of making a sale thereof, any intoxicating liquors, shall be liable to the penalties enacted in article 84.

The finding of such liquors upon such premises shall be a presumption that such liquors are there kept for the purpose of sale, and proof of anterior facts may be adduced at the trial in support of such presumption. R., S. 906.

100. No person carrying on any business whatsoever, and not licensed for the sale of intoxicating liquors, shall keep in his place of business or in the dependencies thereof, any quantity whatsoever of intoxicating liquors, under a penalty of the confiscation of said liquors, in addition to the penalties enacted by article 84.

The finding of such liquors upon such premises shall be a presumption that such liquors are there kept for the purpose of sale; and the revenue police constables or any officers employed by the Government are authorized to seize such intoxicating liquors without a warrant. R. S., 907.

101. The judgment inflicting such penalty shall order the confiscation of the said liquors and vessels.

The collector of provincial revenue shall have the liquors and vessels, so confiscated, sold by private sale or by auction, according to the instructions which are given him by the Provincial Treasurer; and the collector of provincial revenue shall retain one-third of the price realized and remit the remaining two-thirds to the Provincial Treasurer. R. S., 908.

102. Any person not licensed under this law for the sale of intoxicating liquors, who, at any time during which he does not hold a license therefor, keeps a bar open to the public for the sale of such liquors, or exposes the same for sale in a shop or place of business, is liable to the

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penalties enacted by article 84; and the keeping of any such bar or intoxicating liquors so exposed shall be *primâ facie* evidence that the liquors thus kept or exposed are so kept for purposes of sale, without it being necessary to prove any sale thereof. R. S., 908*a*.

103. The court, before which the complaint is heard, may, upon satisfactory proof to that effect, revoke the license of the keeper of any hotel, inn or restaurant, who permits any one to become intoxicated therein, or who allows any disorder whatsoever to occur therein, without prejudice to the penalties imposed by law. R. S., 909.

104. Articles 84, 99 and 100 shall not prevent any brewer, distiller or other person, duly licensed by the Government of Canada for the manufacture of intoxicating liquors, from keeping or selling any liquor manufactured by him in any building wherein such manufacture is carried on, provided such building forms no part of and does not communicate by any entrance with any shop or premises wherein any intoxicating liquor is sold by retail, or wherein is kept any broken package of such liquor: but every such brewer, distiller or other person shall first obtain a wholesale liquor license, or a bottler's license, as the case may be, to sell under this law the liquors so manufactured by him. R. S., 909*a*.

105. The said articles 84, 99 and 100 shall not prevent any chemist or druggist, duly registered as such under and by virtue of the Quebec Pharmacy Act, from selling intoxicating liquors for strictly medicinal, sacramental or mechanical purposes, under certificate from a registered medical practitioner, if for medicinal purposes, or a clergyman, if for sacramental purposes, or from the purchaser and a justice of the peace, if for mechanical purposes, and then only in quantities not exceeding one pint imperial measure, at a time; but every such chemist or druggist who wishes to sell intoxicating liquors without such certificate, or to sell such liquors in quantities exceeding an imperial pint, must be the holder of a retail liquor shop license, or a wholesale liquor license, or a wholesale and retail liquor license, or a license for the sale by wholesale of intoxicating liquors to chemists and druggists only under the penalties prescribed by article 84.

Every chemist or druggist, who is not the holder of a license under this law for the sale of intoxicating liquor, shall keep a register of his sales of such liquor in the form to be determined by the Lieutenant-Governor in Council, in which register he shall enter in separate columns, besides such other information as the Lieutenant-Governor in Council may see fit to require, the date of each sale, the nature and quantity of the liquor sold, the name of the purchaser and that of the signer of the certificate under which the sale was made.

He shall also preserve the certificates and number them, and the register shall contain a separate column in which the numbers of the certificates shall be entered. Whenever required to do so by the collector of provincial revenue or any person authorized by him, every such chemist or druggist shall exhibit to him such register and certificates and afford to him an examination of the same.

In default of complying with any of the requirements of this article, every such chemist or druggist shall incur the penalties prescribed by article 84. R. S., 909*b*.

106. Each inn and temperance hotel, situate in a village or in the country parts, shall, in addition to the lodging apartments of the family, contain at least three bedrooms having each a good bed, for the use of travellers. R. S., 910.

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107. The master of such inn or temperance hotel shall keep in an out-house, near the main building, stalls for at least four horses, and shall always be provided with edibles and provisions for travellers, and hay and grain for their horses. R. S., 911.

108. Every inn or temperance hotel, in a city or town, shall contain a kitchen of sufficient dimensions, all the utensils necessary to prepare meal for at least ten persons, a dining-room sufficiently large to seat such ten persons, with a suitable table whereon to lay the cloth, and at least five bedrooms in addition to the lodging apartments of the family. R. S., 912.

109. Every restaurant must be suitably furnished to provide meals for at least ten persons at a time. R. S., 913.

110. The master of every such inn, temperance hotel or restaurant shall, at all times, on demand of the collector of provincial revenue or his deputy, exhibit his license, which he shall keep constantly exposed to the view of the public, in the bar of his establishment or in some other place approved of by the collector of provincial revenue. R. S., 914.

111. He shall cause to be painted in legible characters, at least three inches high and broad in proportion, immediately above the outside of the door of his house, his name in full, with the words, where it is an inn or restaurant: "Licensed to retail spirituous liquors", or, "Licensed to retail intoxicating liquors", or "Licensed wine and beer house", and, where it is a temperance hotel, "Licensed to keep a temperance hotel", under the penalties mentioned in articles 137. R. S., 915.

112. If such establishment be situated in the country parts, the master thereof must moreover expose and keep exposed, during the whole period of his license, a similar inscription or sign, composed of letters, not less than four inches high, and wide in proportion, on his house or on the top of a post, or several posts, of sufficient height, close to his house, to indicate it to travellers, under the penalties mentioned in article 137. R. S., 916.

113. Every bottler shall cause to be painted in legible letters, of at least two inches in height and a proportionate width, on both sides of his vehicle his name at full length, adding thereto the word "licensed", under a penalty of twenty dollars for each contravention. R. S., 917.

114. Every inn, temperance hotel, restaurant, tavern at the mines, steamboat bar and railway buffet, shall be kept peaceably, and order shall be maintained therein. R. S., 918.

115. No gambling is allowed therein, under the penalties mentioned in article 137 against the keeper or master of each such inn, temperance hotel, restaurant, tavern at the mines, steamboat bar and railway buffet, for each contravention. R. S., 919.

116. Not more than one drinking bar shall be kept therein, under the penalties mentioned in article 137. R. S., 920.

117. Intoxicating liquors shall not at any time be knowingly sold therein to drunken persons, nor, after the hour of eight in the evening, to soldiers, sailors, apprentices or servants, known as such by the master of the house. R. S., 921, *in part*.

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118. Every grocer, in the account which he delivers to his customers for sales made by him, shall enter his sales of intoxicating liquor separately from his other sales.

119. Every club licensed under article 46 for the sale of intoxicating liquors, in which such liquor is sold in contravention of the constitution, rules and regulations of such club which were submitted to the Provincial Treasurer previous to the granting of such license, is liable to the penalties prescribed by article 137. R. S., 921*aa*.

120. Prosecutions for the illicit sale of intoxicating liquors in clubs licensed under article 46 may be taken either against the manager of the club or the actual vendor of the liquor, or against the club as a body corporate; in the latter case the judgment shall, in default of payment of the penalty, be executed as provided by article 207. R. S., 921*b*.

121. Subject to the provisions of article 1111 of the Revised Statutes, intoxicating liquors shall not be sold in any inn or restaurant at any place in the Province, or in any tavern at the mines, on any day of the week from midnight until five o'clock in the morning, or during the whole of any Sunday, unless on a special demand for medicinal purposes, signed by a medical practitioner or by a clergyman, and produced by the purchaser.

The liquors, so sold on special demand, shall not be drunk on the premises.

During the time when the sale of liquors is prohibited, all the bars shall be kept closed. R. S., 922.

122. Intoxicating liquor shall not be sold in any liquor shop, whether wholesale or retail, or in the dependencies thereof, nor by any bottler, at any place in the Province, on any day of the week from midnight until four o'clock in the morning, or during the whole of any Sunday, unless on a special demand for medicinal purposes, signed by a medical practitioner or by a clergyman, and produced by the purchaser. R. S., 922*a* *in part*.

123. During the time sales are prohibited under article 122, all such liquor shops and bottlers' establishments shall be kept closed. R. S., 922*a* *in part*.

124. Subject to the provisions of article 1111 of the Revised Statutes, and article 122 of this law, during the time when, under any law of this Province, the sale of intoxicating liquors is prohibited, no such liquors can be delivered to any person even gratuitously in any place of business or dependencies thereof of such licensed persons. R. S., 923.

125. In prosecutions for keeping open selling or giving during prohibited hours, any intoxicating liquor, in virtue of any law whatsoever of this Province, the court has a right to convict if one or other of these offences is proved, provided they relate to the same circumstances. R. S., 923*a*.

126. Every person, who obtains intoxicating liquor in contravention of the provisions of the law, either by purchasing the same from the premises of an unlicensed person, or by obtaining them, even gratuitously, from the premises of a licensed person, but outside the hours and conditions required by this law and the provisions of article 1111 of the Revised Statutes, is liable to a fine of not less than five dollars nor more

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than twenty-five dollars, and, in default of payment, to imprisonment of not less than two weeks nor more than one month. R. S., 923*b*.

127. No penalty enacted by this law against persons obtaining liquor either from holders of licenses thereunder or from unlicensed persons, shall be incurred by revenue officers or other persons employed by the Government for the enforcing of the said law, nor to those acting under the instructions of the said officers or persons, provided the said officers or persons be acting in their official capacity.

128. Any person licensed under this law may refuse to admit to the premises for which his license is granted any person who is intoxicated, any may refuse to admit to, and may turn out of such premises any person who is violent, quarrelsome or disorderly, and any person whose presence in his premises would subject such licensed person to a penalty under this law.

Any such person, who, upon being requested, in pursuance of this article, by such licensed person or his agent or servant, or any constable, to quit such premises, refuses or fails so to do, shall be liable to a penalty not exceeding twenty dollars, and in default of payment, to an imprisonment not exceeding one month, or, in the discretion of the court, such offender may be simply condemned to such imprisonment, without the option of a fine; and all constables are required, on demand of such licensed person, his agent or servant, to expel or assist in expelling any such person from such premises, and may use such force as may be required for that purpose. R. S., 923*c*.

129. If any person licensed to sell intoxicating liquors under this law, knowingly harbors, or knowingly suffers to remain in his premises, any constable during any part of the time such constable is on duty, unless for the purpose of keeping or restoring order, or in the execution of his duty, or supplies any liquor or refreshments whatever, by way of gift or sale, to any constable on duty, unless by authority of some superior officer of such constable, or bribes or attempts to bribe any constable, or gives or lends to, or procures for any constable, any money or other articles of value, he shall be liable to a penalty not exceeding fifty dollars, and, in default of payment, imprisonment not exceeding one month. R. S., 923*d*.

130. No offender against the provisions of articles 121, 122, 123 and 124, or against those of section fourteen of chapter five of title four of the Revised Statutes respecting the closing of taverns, shall be liable to more than one condemnation for one and the same offense. R. S., 924.

131. Whilst the license is in force, with the exception of licenses for liquor shops, no trade in groceries, provisions, sweetmeats or fruits, can be carried on in the licensed premises, either directly or indirectly, for the benefit of the licensee. R. S., 925 *in part*.

132. No license for an inn or temperance hotel can refuse to receive and harbor travellers without just cause. R. S., 925 *in part*.

133. No licensee for keeping a restaurant can receive or harbor travellers. R. S., 925 *in part*.

134. Whosoever, being the holder of a beer and wine license, or a cider license, or a license for the sale of native wine, shall sell other

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liquor than that authorized by such license, or in any other manner contravene the provisions of this law or the conditions under which such license was granted, shall be liable to a fine of fifty dollars for each offence or imprisonment for three months in default of payment.

In addition to the fine, the license of such offender shall be cancelled and shall not be renewable during that year. R. S., 925*a*.

135. Every person, holding a license under this law, who does not throughout the whole year for which he holds such license, comply with the conditions under which such license was granted, is liable, for each contravention, to the penalties provided in article 137. R. S., 925*b*.

136. Any person, whether he be or be not licensed to sell intoxicating liquors, who sells such liquors, representing them as not being intoxicating, or who sells or exposes for sale intoxicating liquors in bottles or other vessels labelled or marked as containing non-intoxicating liquors, shall incur the penalties prescribed in articles 84 or 137, as case may be. R. S., 925*c*.

137. Every infraction of the first part of this law by any person holding a license thereunder for the sale of intoxicating liquors, in respect of which infraction no other penalty is enacted therein, is punishable, for a first offence, by a fine of not less than thirty nor more than seventy-five dollars, and, in default of payment, by an imprisonment of three months; for a second offence, by a fine of not less than seventy-five nor more than one hundred and twenty dollars, and, in default of payment, by an imprisonment of three months; and for a third offence, by a fine of not less than one hundred and twenty nor more than two hundred dollars, and, in default of payment, by an imprisonment of three months; and upon conviction for such third offence, the license may be annulled, and during that year no similar license shall be granted to the offender.

If, on a prosecution for a second offence, the first conviction is not proved, the court may nevertheless condemn the defendant if the proof is sufficient, and impose the penalty fixed for a first offence.

In like manner, on a prosecution for a third offence or any other subsequent offence, the court may impose the penalty fixed by law for a second or a first offence, as the case may be, instead of annulling the license, if the prosecution does not prove the first or the second or the two preceding convictions, although not prayed for. R. S., 926.

138. For an offence to be considered a second or third offence, within the meaning of article 137, it is not necessary that such offence be of the same kind as those previously proved. R. S., 926*a*., *in part*.

139. For an offence to be considered a third offence, within the meaning of article 137, it must have been committed within eighteen months of the first offence. R. S., 926*a*., *in part*.

140. The magistrate before whom a prosecution for an infringment of this law has been instituted, may ascertain, before judgment, whether the offence is a second or third offence, although the same be not alleged in the complaint; and, if it be established that it is a second or a third offence, he shall order the complaint to be amended accordingly, and render judgment as for such second or third offence, as the case may be. R. S., 926*e*.

141. If a licensee to sell intoxicating liquors or to keep a temperance

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hotel be condemned for a contravention of this law, the court pronouncing the judgment may annul his license; if such license be convicted of keeping a disorderly house or of any other indictable offence mentioned in any statute, or if he be sentenced to imprisonment in the common gaol with hard labor or in the penitentiary, he shall incur the loss of his license, and no similar license shall be again granted him during the three years next after the judgment of the court. R. S., 927, 936.

142. When the collector of provincial revenue has been informed by the court or by the clerk of the court of the annulment of any license, he shall notify the licensee of such annulment and, thereupon, such license becomes null and void. R. S., 937.

143. If any licensee, who has received regular notice of the annulment of his license, continue to keep the house or shop authorized by such license, and to sell intoxicating liquors therein, he becomes liable to the fines and penalties imposed by this law on persons who keep such houses, or sell such liquors, without license. R. S., 938.

144. In any case in which, under the provisions of this law, of the Canada Temperance Act, or of the Temperance Act of 1864, the certificate of a clergyman, a medical practitioner or a justice of the peace is required for the sale of intoxicating liquor, without which certificate the liquor could not be lawfully obtained, any person convicted of having colorably delivered such a certificate, or of having obtained one under false pretences, shall be liable to a fine of not less than five dollars nor more than fifty dollars, in the discretion of the court. R. S., 926*b*.

145. Any person who, having violated any of the provisions of this law, compromises, compounds or settles the offence, or attempts to compromise, compound or settle the offence, with any person or persons, with the view of preventing any complaint being made in respect thereof, or, if a complaint has been made, with the view of getting rid of or of stopping such complaint or having the same dismissed for want of prosecution or otherwise, shall be guilty of an offence under this law, and shall be liable to a fine of one hundred dollars or imprisonment for a period not exceeding three months, in the discretion of the court. R. S., 926*c*.

146. Every person, who is concerned in, or is a party to the compromise, composition or settlement mentioned in article 145, shall be liable to a fine of fifty dollars, or to imprisonment in the common gaol for not more than three months, in the discretion of the court. R. S., 926*d*.

147. The husband, wife, father, mother, brother, sister, curator, tutor or employer of any person who has the habit of drinking intoxicating liquor to excess;

The license commissioners in the cities of Quebec and Montreal, and, in all other parts of the Province, the municipal councils or the mayor, a *curé*, pastor, or justice of the peace:

The manager or person in charge of any asylum, hospital, or other charitable institution, in which such person resides or is detained;

The curator of any interdicted person;

The father, mother, brother or sister of the husband or wife of such interdicted person; or

The tutor or curator of any child of such interdicted person;

May give notice in writing, signed by him or her, to any person licensed to sell intoxicating liquors, or who habitually sells such liquors,

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not to sell or deliver the same to the person having such habit or to such interdicted person.

Such notice shall be signed in duplicate; one of the duplicates shall be served upon the party by any bailiff of the Superior Court for the district, and such bailiff shall make return of such service under his oath of office. R. S., 928.

148. If, in the course of one year from the date of such notification, the person thus notified, either personally, or by his clerk, servant or agent, sell or deliver such liquors otherwise than on a special demand for medicinal purposes, signed by a medical practitioner, to the person having such habit, or to such interdicted person, the person who had given the notice may, by an action for personal damages, — if the same be instituted within six months of the commission of the offence, — recover from the person so notified the sum of not less than ten dollars or more than five hundred dollars, as it shall be adjudged by the court or jury, as damages. R. S., 929.

149. Every married woman may, notwithstanding article 176 of the Civil Code, institute such an action in her own name without the authorization of her husband.

All damages recovered by her are, in such cases, for her sole use. R. S., 931.

150. In the case of the death of either of the parties to the suit, provided that the identity of the person, to whom the liquor is sold, be known to the seller at the time of such sale or delivery, the action and the right of action, given by articles 147, 148 and 149, subsist in favor of or against their legal representatives respectively. R. S., 932.

151. The master of an inn, restaurant or any other house, where intoxicating liquors are sold, and every person employed by him in the establishment, are severally liable to an action of damages towards the representatives of a person, who shall have become intoxicated there by means of liquors delivered to him by the said master or employee, and who, by reason of his drunkenness, shall have committed suicide, or died from some accident occasioned by such intoxication. R. S., 933.

152. Such right of action, which lasts but for three months from the date of death, may be joint and several, or distinct and separate, against each of the individuals so responsible; and the representatives of the person deceased may recover a sum of not less than one hundred dollars, and not exceeding one thousand dollars, under such action for damages, if any sum be adjudged to them by the court or jury. R. S., 934.

153. If a person in a state of intoxication commit an assault or damage any property, the person who shall have delivered the liquor causing such intoxication, in contravention of this or any other law, is subject, as regards the person injured, to the civil action of damages jointly and severally with the person who committed the assault or damaged the property. R. S., 935.

154. Besides the civil actions mentioned in articles 148 to 153, inclusively, every person contravening any of the provisions of article 147, is liable to the penalties imposed by article 137. R. S., 929a.

155. Every person, whether a minor or of the age of majority, who purchases from any person licensed under this law or unlicensed, in-

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toxicating liquors for a person reputed to be an habitual drunkard is liable for each such offence to a penalty not exceeding fifty dollars and an imprisonment not exceeding three months in default of payment. R. S., 936.

156. Every payment in money, or in objects having a pecuniary value, for intoxicating liqours furnished in contravention of this law, is held to have been made without consideration and against law. R. S., 939.

157. The amount of such payment may be recovered from the receiver thereof by the party who made such payment, or by his wife without the authorization of her husband, and by his father or his tutor, if he be a minor; and all contracts and obligations whatever, in whole or in part, made and entered into, for and by reason of such furnishing of such liquors in violation of the law, are null, saving the rights of third parties. R. S., 940.

158. No action can be maintained for or by reason of the sale of liquors furnished in contravention of this law.

This article does not affect the provisions of article 1481 of the Civil Code. R. S., 941.

159. Every collector of provincial revenue, and every policeman, constable or other person thereto authorized in writing by a collector of provincial revenue or his deputy, a justice of the peace, a judge of the sessions of the peace, a police magistrate or recorder, may enter any unlicensed place frequented by the public, when there is reason to suspect that intoxicating liquors are therein exposed for sale, and search therefor, and open, with every necessary assistance, and even forcibly upon refusal so to do, all cupboards and receptacles in which he thinks such liquors are concealed.

If such are discovered, he shall take and carry away such intoxicating liquors and the vessels containing the same, and shall place them in the care and possession of the collector of provincial revenue for the district, to await the judgment of the court respecting them. R. S., 942.

160. Any member of the revenue police in uniform shall have the right to enter at all times the establishment of any person licensed under this law.

Such person shall be liable to a penalty of thirty dollars for refusing to allow such officer to enter. R. S., 942*a*.

SECTION XXVIII.

PROVISIONS RESPECTING CERTAIN RIGHTS OF MUNICIPALITIES.

§ 1.—*Municipal by-laws for closing places where intoxicating liquor is sold.*

161. It shall be lawful for municipal councils of cities, towns, villages and all other local municipal authorities to enact by-laws for the closing, at the hour of seven in the evening on Sundays, and at ten in the evening on the other days of the week, and the keeping closed for the remainder of those days, of all bars in establishments in which intoxicating liquors are sold, and also to enact that no intoxicating liquor shall be sold in any licensed premises in the municipality during the

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hours when the bars are closed, and by such by-laws to impose a penalty not to exceed fifty dollars for each offence and imprisonment in default of payment not to exceed three months. R. S., 927*a*.

§ 2.—*Restriction as to amount to be levied by municipalities upon licensees under this law.*

162. It shall not be lawful for any municipal council of a city, town, village or other local municipal authority to levy, by by-law, resolution or otherwise, any license, tax, impost, or duty, exceeding in any one year two hundred dollars in cities and towns and fifty dollars in all other municipalities, upon any holder of a license under this law, except upon peddlers, either for the confirmation of a certificate to obtain a license or otherwise for the confirmation of a certificate to obtain a license or otherwise for the occupations for which they hold such licenses. R. S., 927*b*.

SECTION XXIX.

PROSECUTIONS.

§ 1.—*General Provisions and Procedure.*

163. It is the duty of the collector of provincial revenue, notwithstanding the provisions of article 165, to institute prosecutions wherever he has reason to believe that a contravention of the law has been committed and that such prosecutions can be maintained. R. S., 1027.

164. Whenever the collector of provincial revenue is called upon to institute a prosecution, he may, if he have reason to believe that the prosecution cannot be maintained, exact from the person asking for the institution of such prosecution the deposit of a reasonable amount to cover costs. R. S., 1028, *in part*.

165. It is the duty of the collector of provincial revenue to prosecute contraventions of this law whenever he is requested so to do by a municipal corporation, and such corporation has assumed the responsibility for the costs to be incurred.

In any municipality where a prohibitory by-law is in force or where the council thereof prohibits the confirmation of certificates to obtain licenses for the sale of intoxicating liquors, it shall be the duty of the council of such municipality to prosecute all offences against this law, in which case the municipality shall be responsible for all costs, and shall receive the whole fines collected for contraventions thereof.

In case, however, such council refuse or neglect to prosecute for infractions of the law, when notified thereof, it shall be lawful for the collector of provincial revenue to prosecute the offenders, at the cost of the municipality. R. S., 1026, *in part*.

166. The fines and penalties, imposed by this law or by the regulations made under its authority, and the duties and fees exigible under the same, shall be recovered in the manner and before the courts hereinafter indicated. R. S., 1029.

167. Every prosecution shall be brought in the judicial district where the contravention has been committed, or in that where the contravening person resides.

If the contravention has been committed on board a steamboat or other vessel, the prosecution may be instituted in any judicial district whatsoever of the Province.

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If the contravention have taken place on the borders of two adjacent districts where it is difficult to determine in which of said districts the offence was committed, the prosecution may be instituted in either of said districts. R. S., 1030.

168. For all matters pertaining to this law, the county of Berthier shall form part of the district of Richelieu for judicial purposes, and the county of Verchères shall form part of the district of Montreal for the said purposes. R. S., 1030a.

169. Any action or prosecution may, at the option of the prosecutor, be brought before the Circuit Court, but without any right of evocation therefrom to the Superior Court, or before two justices of the peace in the judicial district, or before the judge of the sessions of the peace, or before the recorder's court or the recorder, or before the police magistrate, the district magistrate, or any other officer having the powers of two justices of the peace, subject to the provisions of section 842, subsections 3, 4, 5 and 6, of the Criminal Code, 1892. R. S., 1031.

170. In the Circuit Court, the service of the summons and of the other proceedings in these prosecutions and actions is made in the manner provided for suits between lessors and lessees. R. S., 1032.

171. Except as regards actions brought in the Circuit Court, service of the summons is made by any bailiff or constable, appointed for the judicial district where the prosecution is instituted, by leaving a copy, certified by the magistrate, judge, or functionary who has signed the original, or by the advocate of the prosecutor, with the defendant personally, or a grown or reasonable person of his family at his domicile or place of business. R. S., 1033.

172. The service by a bailiff shall be certified under his oath of office, and that made by a constable shall be proved by means of a return, sworn to before a justice of the peace in the judicial district, or before the court.

Before the Circuit Court, the services of proceedings and convictions are made in the same manner as the service of the summons. R. S., 1034.

173. In all prosecutions under the authority of this law before the Circuit Court, the procédure shall be summary and be the same as that prescribed for suits between lessors or lessees in articles 1150 to 1162 of the Code of Civil Procedure. R. S., 1035.

174. Saving the cases wherein it is otherwise prescribed in this law, in all prosecutions instituted before two justices of the peace, a judge of the sessions of the peace, a recorder's court, a recorder, police or district magistrate or other officer having the powers of two justices of the peace, the provisions of Part LVIII of the Criminal Code, 1892, as amended from time to time, and the provisions of articles 2713 to 2720 of the Revised Statutes apply.

It is, however, not necessary to have the evidence taken down in writing or in shortland. R. S., 1036.

175. Actions or prosecutions for a contravention of this law are brought in the name of the collector of provincial revenue for the district in which the offence has been committed, or in the name of the corporation or council of the city, town, or other local municipality, where such offence has been committed. R. S., 1037.

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176. In every prosecution for a contravention of this law brought in the name of a collector of provincial revenue, the complaint shall be signed by the proper collector of provincial revenue or his deputy.

177. Such prosecutions, instituted by a municipal corporation and the judgment rendered on such prosecution become of no effect, if a prosecution be brought by the collector of provincial revenue to prevent collusion between the parties to the action, and cannot be pleaded thereto, unless the amount sued for by such corporation, has been paid as required by law, or the defendant has undergone the imprisonment to which he has been condemned in default of payment. R. S., 1038.

178. In all proceedings under this law, the simple declaration of a collector of provincial revenue that he is such, is sufficient proof of his nomination and appointment and of his being in office at the date of such declaration; and, if a defendant or any party, objecting to any proceeding on the part of a collector of provincial revenue, deny the truth of such declaration, it is incumbent on such defendant or party to prove the falsity of the declaration.

The same also applies to the declaration of the collector of provincial revenue as to the extent and limits of his revenue district. R. S., 1038a.

179. It is not necessary to allege, in a prosecution instituted under the authority of this law, in the declaration, information, complaint or summons, negative facts or any facts which devolve upon the defendant to prove. R. S., 1039.

180. In any prosecution under this law, the actual offender, as well as the owner, lessee or occupant of the premises, and, in the case of houses of prostitution, any inmate of the same, shall be personally liable to the penalties and punishments which may be imposed for the infraction or violation thereof, nothwithstanding that the contravention be committed by some other person who cannot be proved to have so acted under or by direction of such owner, lessee, or occupant; and proof of such contravention being committed by any person in the employ of such owner, lessee or occupant, or who is suffered to remain in or upon the premises of such owner, lessee or occupant, shall be conclusive evidence that such contravention took place with the authority and by the direction of such owner, lessee, or occupant. At the prosecutor's option, the actual offender may be prosecuted, jointly with or separately from such owner, lessee or occupant, but both of them shall not be convicted for the same offence, and the conviction of one of them shall be a bar to the conviction of the other of them therefor. R. S., 1039a.

181. In proving the sale or delivery, gratuitous or otherwise, or the consumption of intoxicating liquors in violation of this law, it shall not be necessary to prove that any money actually passed or any such liquor was actually consumed, if the magistrate or court hearing the case be satisfied that a transaction in the nature of a sale actually took place, or that any consumption of liquor was about to take place; and proof of consumption or intended consumption of such liquor on premises under license or in respect to which a license is required under this law, by some person other than the occupant of said premises, shall be evidence that such liquor was sold to the person consuming or being about to consume, or carrying away, or being about to carry away the same, against the holder of the license or the occupant of the said premises.

182. In any prosecution instituted by any collector of provincial

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revenue, under the authority of this law against an unlicensed person, it is optional with the collector to prosecute for a sale of liquor without license or for the specific offence which such person has committed and for which he would have been amenable even if he had a license. R. S., 1039*b*.

183. Several cases of contravention, committed by the same person, may be cumulated in one and the same declaration, information, complaint or summons, provided that such declaration, information, complaint or summons contain specifically a statement of the time and place of each contravention; and in such case, the forms indicated by this law shall be modified *mutatis mutandis*; but no further additional fees shall be allowed to the advocates, than if there had been only one offence. R. S., 1040.

184. Before every court, except the Circuit Court where the ordinary rules of procedure in reference to amendments prevail, any declaration, information, complaint or summons may, on application of the prosecutor to that effect, be amended in substance or in form, without costs. Upon such amendment, the defendant may obtain a further delay in which to make his defence and proof. R. S., 1042.

185. If, in any prosecution instituted under this law, any stay of proceedings or postponement of the trial or hearing is applied for on behalf of the defence, such stay or postponement shall be granted only if the costs of the day are previously paid by the defence, which costs shall include a fee of three dollars to the prosecuting attorney. R. S., 1042*a*.

186. Any husband, living and residing with his wife, when any contravention of this law is committed by her, whether she is a public trader or not, may be prosecuted and convicted, in the same manner, as if he himself had contravened this law. R. S., 1043.

187. In every prosecution under this law before any court, other than the Circuit Court, in which court the rules of procedure applicable to suits between lessors and lessees as to the taking of evidence prevail, the court may summon before it any person represented to it as a material witness therein; and, if such person refuse or neglect to attend on such summons, the court, if, from affidavits or from the circumstances of the case, it be of opinion that the witness refuses to appear and thereby the ends of justice may be defeated, may issue its warrant for the arrest of such person; and, thereupon, he shall be brought before the court, and if he refuse to be sworn, or to affirm, or to answer any questions touching the case, he may be committed to the common gaol, there to remain, until he consents to be sworn or to affirm and to answer. R. S., 1044.

188. If any person, summoned as a witness to give evidence before a court touching any of the matters relative to this law, neglect or refuse to appear at the time and place appointed for that purpose, without reasonable excuse and, in respect of the reasonableness of which excuse, the court seized with the prosecution shall decide, or, appearing, refuses to give evidence upon oath, he shall incur, for such neglect or refusal, a penalty of not less than five nor more than forty dollars, and, in default of payment, imprisonment of not less than ten nor more than thirty days, the whole in the discretion of the court, even though the prosecution may have terminated, without his having appeared or given evidence. R. S., 1045.

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189. Upon the demand of either party, the court may in its discretion receive and cause to be taken in writing the depositions of the witnesses then and there present, and postpone the trial to a further day fixed for that purpose. R. S., 1046.

190. Every person, other than the defendant, summoned or examined as a witness in any prosecution brought under this law, is bound to answer all questions put to him, which are pertinent to the issue, notwithstanding any declaration on his part that his answers may disclose facts tending to subject him to any penalty imposed by this law; but such evidence shall not be used against him in any prosecution.

However, the collector of provincial revenue shall not, when called as a witness, be required to divulge the name of the informer in the prosecution, and, if he be asked to do so, he is not obliged to answer. R. S., 1047.

191. In prosecutions instituted under this law, the defendant is a competent witness.

192. In prosecutions for the sale, without license, of intoxicating liquors, it shall not be necessary that any evidence be given as to the precise description of the liquor sold, nor shall it be necessary to state the quantity of liquor sold, except in the case of offences where the quantity is essential, and then it shall be sufficient to allege the sale of more or less than such quantity. R. S., 1049.

193. Rigorous precision as to the mention of time in the complaint is not necessary in the proof to justify a conviction; it is sufficient to prove that such contravention was committed within the delay allowed by law for prosecutions. R. S., 1050, *in part*.

194. The provisions of article 193 apply to all prosecutions, including those instituted for the sale of intoxicating liquors on Sunday. R. S., 1050, *in part*.

195. In any prosecution against a person not licensed under the provisions of this law, rigorous precision as to the name of the defendant is not necessary in the proof to justify a conviction: the personal identification of the defendant by the collector of provincial revenue or any of his officers, under oath as a witness, is sufficient, and no error in the name of the defendant shall invalidate the conviction or commitment.

196. The production of the license constitutes sufficient evidence of the payment of the duty thereon, unless the party prosecuting proves that the duty has not been paid, in which case the license, without such payment, is deemed to be invalid. R. S., 1051.

197. Whenever the court is of opinion that the analysis of a liquor reputed intoxicating is necessary for the purposes of this law, the costs thereof shall be included among the taxed costs of the action, but only to an amount not exceeding twenty dollars. R. S., 1051*a*.

§ 2. — *Judgments.*

198. When a prosecution, instituted under the authority of this law has been tried before two justices of the peace, judgment may be pronounced by one of them in the absence of the other, provided that such

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judgment be reduced to writing and signed by both justices of the peace. R. S., 1055.

199. When a prosecution has been tried before two justices of the peace, and they fail to agree on the judgment to be rendered, either of such justices of the peace may sign a certificate to that effect, and transmit it to the collector of provincial revenue, who thereupon may institute a new action for the same contravention. R. S., 1056.

200. In default of payment of any fine imposed, or of any sum claimed under this law, the contravening person condemned to pay the same shall be imprisoned and detained in the common gaol during a period of three months, unless another period of detention be prescribed by this act. R. S., 1057.

201. The penalty for a repetition of the contravention, against any one who shall have incurred a subsequent condemnation for a contravention of the same nature and kind, under the authority of this law, except in cases otherwise provided for, is a fine of double the amount imposed for the previous contravention and imprisonment for six months, in default of payment. R. S., 1058.

202. In the cases mentioned in articles 200 and 201 and in all other cases wherein a similar legal provision exists, every judgment or conviction shall contain a condemnation of the defendant to such imprisonment. R. S., 1059.

§ 3.—*Costs.*

203. In all prosecutions or actions brought before the Circuit Court, the fees of the clerk of such court, of the advocate and of the bailiff, shall be the same as those which are now allowed in the tariff of fees for the class of actions of twenty-five to forty dollars.

In all other prosecutions or actions the following fees shall be allowed:

a. To the clerks:

For original summons	$0 20
" each copy of do	0 10
" original subpœna	0 20
" each copy of do	0 10
" original warrant	0 30
" each copy of do	0 10
" original bail-bond	0 30
" each copy of do	0 10
" warrant of seizure and sale	0 30
" " commitment	0 30
" each witness sworn	0 10
" drawing up every deposition	0 30
" minute of proceedings in each case	0 50
" conviction	0 30
" copy of conviction	0 20
" bill of costs	0 20
" certificate of taxation	0 10

b. To the bailiff, peace officer or constable:

For the service of any summons, warrant, subpœna, or order, and return	$0 20
" each mile travelled to serve the same (no allowance of mileage in returning	0 20
" every arrest, exclusive of mileage	1 00
" seizure and sale under warrant, including publication, but exclusive of mileage	1 50
" seizure only, not followed by sale	0 75

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c. To the advocate :

When no witnesses are examined..... ..... $5 00
" witnesses are examined..... .... 8 00

d. To the witness :

One dollar per day, and ten cents for each mile travelled by him to attend court, when he resides more than five miles from the place where the court is held. R. S., 1060.

204. No costs shall be adjudged against the collector of provincial revenue in any action or prosecution instituted under this law ; but, on the recommendation of the court or of the collector of provincial revenue, the Provincial Treasurer may, in his discretion, pay to the person in favor of whom judgment has been pronounced against the collector of provincial revenue, the costs or indemnity to which he may deem such person equitably entitled. R. S., 1062.

205. In any prosecution under this law, the Temperance Act of 1864, or the second part of the Canada Temperance Act, if the collector of provincial revenue attends the court as prosecutor or witness, and travels to attend such court a distance of more than three miles from his place of residence, it shall be lawful for the justice or justices trying the case to tax against the defendant, in cases of conviction, as costs in the cause to cover railway fare or hire of conveyance of the collector of provincial revenue or any person deputed by him, in attending the said prosecution, as follows :

1. In case he travels by railway or stage, the fare actually required to be paid by him ;

2. If by a hired conveyance, the sums actually required to be paid for a horse conveyance and tolls ;

3. If in his own conveyance, ten cents per mile one way.

And to cover all other expenses, an additional sum of one dollar per day shall be allowed.

In case of adjournment at the instance of the defendant, similar additional allowances to be made, when the collector of provincial revenue is actually in attendance.

The mileage and other expenses shall be verified by the oath of the collector of provincial revenue. R. S., 1062*a*.

206. In any prosecution under this law, the Canada Temperance Act of 1864, or the second part of the Canada Temperance Act, the cost of taking down the evidence in writing, whether by shorthand or otherwise, shall be included in the taxed costs of the suit. R. S., 1062*b*.

§ 4. — *Execution of Judgments.*

207. In default of immediate payment of the fine and costs, the prosecutor may, upon the rendering of the judgment or conviction, or at any time during the delay, if any, granted the defendant, make option whether the defendant shall be first imprisoned for the time mentioned in the judgment or conviction, or shall be first proceeded against by seizure.

In the latter case, the amount of such fine and costs is levied by a warrant of seizure and sale of the moveables and effects of the defendant ; and, in default of moveables and effects, or, in case they be insufficient, the defendant shall be imprisoned ; but, in either case, he

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nay procure his discharge from imprisonment by paying the fine in full nd all costs incurred to the time of the conviction and subsequent costs. t. S., 1064, *in part*.

208. Except in the case of full payment as aforesaid, no defendant mprisoned in virtue of any provisions of this law shall be liberated on he ground of any defect of form in the warrant of commitment, or vithout due notice given to the prosecutor; nor shall any partial payment ffect or modify the terms of the judgment pronounced against him, in o far as imprisonment is concerned. R. S., 1064, *in part*.

209. Any one knowing or having reason to believe that a commitment has been issued against any person under this law, who prevents he arrest of the defendant, or by any act or advice or in any other nanner whatsoever, procures for the defendant the means of or facilitates his avoiding arrest, is liable to a fine of forty dollars. R. S., 1065.

210. The execution of a judgment rendered in the Circuit Court may ake place on the expiration of two days from the date of such judgnent. R. S., 1066.

211. In the case where coercive imprisonment is had recourse to in he said Circuit Court, it is granted by one of the judges of the Superior Court or of the Circuit Court, or by the clerk of the Circuit Court, on a summary petition, alleging that the defendant has not paid the total fine, or the amount claimed, and the costs of the prosecution.

It is not necessary that the defendant should be notified of the presentation of such petition. R. S., 1067.

212. Each term of imprisonment under this law is reckoned from the late of incarceration. R. S., 1068.

213. If the conviction be for having sold or allowed to be sold intoxicating liquors on board any steamboat or vessel, without the requisite license, the fine and costs may be equally levied by seizure and sale of the tackle and furniture of the steamboat or vessel, on board which such liquors have been sold. R. S., 1069.

214. The court may, in its discretion, in the case of a first offence committed by the holder of a license under this law, if the fine and costs be not immediately paid, fix an ulterior day for payment, and order that the defendant be placed in custody unless he binds himself with sureties, in an amount not less than the amount of the fine and costs, to the satisfaction of the said court, which is hereby authorized to take the security under the form of an obligation or otherwise, as it may deem fit, to appear on the day fixed; and if, on the day appointed, the fine and costs be not paid, the complainant may make his option, and the defendant shall be dealt with in accordance with article 207. R. S., 1071.

215. Whenever a married woman shall have been convicted in an action instituted under the authority of this law, the complainant may exercise the option whether to proceed by seizure and sale either against the goods of the married woman, or of her husband; and, moreover, in case the goods of one of them should be found insufficient, then against the goods of the other, provided they habitually live together. R. S., 1072.

216. On the condemnation of one member of a copartnership under

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the authority of this law, the right of the prosecutor to proceed by seizure and sale may, in case the goods and effects of the defendant be found insufficient, be exercised against the goods and effects of the co-partnership found on the premises where the contravention has been committed. R. S., 1073.

§ 5. — *Recourse by Certiorari or Prohibition.*

217. (1.) Unless within eight days after the conviction, judgment or order in any action or prosecution instituted under this law, the defendant deposits, in the hands of the clerk of the justices of the peace or of the court which has rendered the judgment, the full amount of the fine and all costs, and a further sum of fifty dollars to secure the payment of such costs as may be subsequently incurred, no action, prosecution, conviction, judgment or order shall be taken by *certiorari* to any other court and, in default of complying with these requirements, the notice of application for *certiorari* shall not suspend, retard or affect the execution of such conviction, judgment or order.

2. The court or judge, to whom such application is made, shall dispose of the same upon the merits, notwithstanding any variance between the information and the conviction, or of any defect in form or substance therein, provided it appears by such conviction that the same was made for an offence against some provision of this law, within the jurisdiction of the justice of the peace, recorder, police magistrate, or district magistrate, who made or signed the same, and provided it further appears from such conviction that the appropriate penalty or punishment for such offence was intended to be thereby adjudged; and, in all cases, where it appears that the merits have been tried, and that the conviction is valid under this law, such conviction shall not be quashed. In case the original record is before the court or judge, it shall be remitted to the court below.

3. There is no appeal from such conviction, judgment or order to any court of sessions of the peace or Queen's Bench.

4. The *certiorari* shall not stay the execution of the sentence of imprisonment against any persons convicted for the third time of the offence of selling liquor without a license, unless a deposit of two hundred dollars is, without delay, made with the collector of provincial revenue, after the conviction; and such deposit shall belong to the Crown if the conviction is not set aside.

5. Any person, applying for a writ of prohibition in reference to anything done or sought to be done under this law, shall previously deposit with the prothonotary of the court, before which the application is made, the sum of fifty dollars to secure the payment of the costs of the adverse party, in case the petition be dismissed.

The writ of *certiorari* or prohibition shall be applied for within eight days after the date of the judgment, and with such application must be deposited the full amount of the fine and costs, in addition to the sum above-mentioned; and the proceedings thereupon shall be summary and proceed from day to day. R. S., 1074.

§ 6.—*Fines*

218. When a prosecution is instituted by the collector of provincial revenue and in his name, the fine recovered shall be applied in the following manner, viz:

1. If the full amount of the fine and costs have been levied:

(*a.*) If the fine do not exceed sixty dollars: one quarter to the col-

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ector of provincial revenue; one quarter to the informer, if there be one, ınd the remainder to the consolidated revenue fund of the Province ;

(*b*.) If the fine exceed sixty dollars, but does not exceed eighty dollars: ›ne quarter to the collector of provincial revenue ; fifteen dollars to the nformer, if there be one, and the remainder to the consolidated revenue 'und of the Province ;

(*c*). If the fine exceed eighty dollars : to the collector of provincial ·evenue, twenty dollars ; to the informer, if there be one, fifteen dollars, ınd the balance to the consolidated revenue fund of the Province.

2. If the fine and costs be not paid in full, the amount levied is ap- ›lied, in the first instance, to the payment of costs, and the balance is ıivided between the collector of provincial revenue, the informer, if :here be one, and the consolidated revenue fund of the Province, in the ›roportions mentioned in the preceding paragraph of this article. R. S., 1076.

219. The fine and costs or the amount levied are payable into the hands of the collector of provincial revenue for the district, who shall without delay apply, divide and apportion the amount recovered, in the manner prescribed by article 218. R. S., 1078.

201. (1.) When the prosecution is instituted by a municipal corporation, the fine levied is applied in the following manner :

(*a*) If the full amount of the fine and costs be levied, one half of the fine belongs to the municipality, with the obligation to pay over one half of such half to the informer, if there be one, and the balance is remitted to the Provincial Treasurer to form part of the consolidated revenue fund;

(*b*) If the total amount of the fine and costs be not levied, the amount recovered is applied, in the first instance, to the payment of costs, and the balance is divided in the manner and proportions indicated in the preceding paragraph.

2. The provisions of article 219 apply to the present article as well as to article 218. R. S., 1079.

221. When prosecutions are instituted by a collector of provincial revenue in consequence of the refusal or neglect of the council of a municipality in which a prohibitory by-law is in force to prosecute as provided by the third clause of article 165, the fines collected in such cases shall be distributed in the following manner :

(*a*) If the fine do not exceed sixty dollars : one quarter to the municipality ; one quarter to the collector of provincial revenue ; one quarter to the informer, if there be one, and the remainder to the consolidated revenue fund of the Province :

(*b*) If the fine exceed sixty dollars, but does not exceed eighty dollars : one quarter to the municipality ; one quarter to the collector of provincial revenue ; fifteen dollars to the informer, if there be one, and the remainder to the consolidated revenue fund of the Province ;

(*c*) If the fine exceed eighty dollars : to the collector of provincial revenue and to the municipality twenty dollars each ; to the informer, if there be one, fifteen dollars, and the balance to the consolidated revenue fund of the Province. R. S., 1026, *in part*.

222. No remission shall be granted of any penalty imposed by virtue of this law, nor shall any suspension be allowed, either before or after judgment, of proceedings instituted under the same, save such delays as the court may see fit to grant in the interest of the parties concerned.

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The power to remit certain penalties, conferred upon the Lieutenant-Governor in Council by article 825 of the Revised Statutes, does not apply to penalties imposed under this law. R. S., 1080, 1080a.

§ 7. — *Additional provisions respecting prosecutions.*

223. Unless otherwise provided, every prosecution under this law shall be instituted within two months of the contravention if committed in either of the cities of Montreal or Quebec; within twelve months if in the revenue district of Saguenay, and within four months of the contravention in every other part of the Province. R. S., 1082.

224. No action shall be maintained against a collector of provincial revenue by reason of his official acts, unless it shall have been instituted within six months from the date of the act which gave rise to it. R. S., 1083.

225. Under a plea of the general issue, the collector of provincial revenue may prove all facts of a nature to establish a special defence, in the same manner as if he had pleaded the same.

On dismissal or discontinuance of the complaint or action, the defendant is entitled to a condemnation for costs in his favor against the adverse party. R. S., 1084.

226. If the judgment be rendered in favor of the plaintiff, and if the court certify that the defendant has reasonable grounds to justify his proceedings, such plaintiff has no right to costs, and shall only recover nominal damages. R. S., 1085.

227. Every clerk of the peace, of justices of the peace, of the recorder, and of the district or police magistrate, and the clerk of the Circuit Court, shall, during the months of April and October, of each year, under a penalty of one dollar for each day during which the same is wilfully neglected, (such penalty to be recovered in the same manner as is provided by this law for the recovery of penalties), transmit to the Provincial Treasurer a statement of all prosecutions instituted under this law, which have been brought before them and adjudicated upon during the six months ending on the thirty-first day of March and the thirtieth day of September respectively; and such statement shall mention the names of the judges or the justices of the peace before whom each case has been brought, the name of each defendant, the date of every judgment, and the amount of fine or other condemnation in each case.

And, if during such six months, no such prosecutions have been instituted, they shall, under a like penalty, be obliged to make a return to that effect. R. S., 1081.

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PART II

OTHER LICENSES

SECTION I.

GENERAL PROVISIONS.

228. Unless otherwise hereinafter enacted, the provisions contained in Part First of this law respecting licenses and the granting of the same, and prosecutions for contraventions, apply *mutatis mutandis* to the licenses hereinafter mentioned and the prosecuting of all contraventions of the second part of this law, as also the provisions respecting the duties, rights and privileges of collectors of provincial revenue, and those relating to costs of prosecutions, judgments and the execution thereof, procedure, the application of duties and fines, and the general administration of this law.

229. It is forbidden to all persons, corporations or clubs, under pain of the fines and penalties hereinafter promulgated :

1. To keep within the limits of this Province a powder magazine or to sell powder or to keep it for sale ;

2. To keep for gain any billiard table, or to keep a billiard table in the premises occupied by a club or association of any kind ;

3. To carry on the trade of auctioneer, pawnbroker, peddler or ferryman between the banks of the River St. Lawrence at certain points hereinafter indicated ;

4. To give any equestrian representation or exhibition of wild animals, known and designated as circus and menagerie ;

Without having previously obtained from the Government, in the manner and form, and after payment of the duties and fees hereinafter mentioned, a license, then in full force, for each of said objects. R. S., *in part.*

SECTION II.

AUCTIONEERS.

230. Auctioneers' licenses are issued by the proper collector of provincial revenue, upon payment of the required duties and fees, and the furnishing of the security mentioned in articles 231 and 232.

An auctioneer's license gives the right to sell intoxicating liquors by auction when they form part of the stock of a deceased person or of one who, whether for reasons of insolvency or otherwise, is selling off his stock, goods or effects. R. S., 828.

231. Previous to the issue of any auctioneer's license, every individual desirous of obtaining one must become personally bound towards the

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Provincial Treasurer, with two sufficient sureties taken before the collector of provincial revenue, or before some person by him thereto authorized, in an amount of which the maximum is two thousand dollars and the minimum five hundred dollars for each, in the discretion of such collector, to guarantee the payment of all moneys for duties, which the applicant for license shall or ought to receive, and for the faithful execution of the obligations imposed upon him by this law. R. S., 866.

232. Such security bond shall be in duplicate, whereof one duplicate shall be transmitted to the Treasurer and the other shall be retained in the archives of the revenue office.

Each surety shall justify on oath his sufficiency before the officer receiving such bond.

The applicant shall pay to the collector of provincial revenue, for the bond executed by his sureties, the sum of four dollars, of which three dollars shall be remitted to the Provincial Treasurer and one shall be retained by the collector of provincial revenue as a fee. R. S., 867.

233. The following property and effects need not be sold by a licensed auctioneer, and sales thereof by auction are exempt from the duty mentioned in section 235, to wit:

The moveable and immoveable property of the Crown,—those sold by authority of justice,—those sold through confiscation,—those of a deceased person,—those belonging to any dissolution of community, or to any church, or which are sold at any bazaar held for religious or charitable purposes, or sold for religious purposes, or which are sold in payment of municipal taxes under the Municipal Code or any other law regulating municipalities;

Moveable and immoveable property, grain and cattle, sold for non-commercial purposes by the inhabitants of the rural districts removing from the locality, and the property of minors sold by forced or voluntary licitation;

Farm animals exhibited by agricultural societies at an exhibition and sold during the time of such exhibition. R. S., 943.

234. The following property and effects sold by auction and outcry in this Province, and adjudged to the highest and last bidder or lowest and last bidder therefor, must be sold by a licensed auctioneer, to wit:

All moveable and immoveable property, effects, goods, and stocks in trade, as well as the assets of a person who has made an assignment under the law respecting the abandonment of property.

The curator to the property of any person who has made an abandonment of his property under the law may, however, himself sell such property to auction, by taking an auctioneer's license. R. S., 943a.

235. Sales by auction of immoveable property, and sales by auction of household furniture and effects in use, including therein pictures, paintings and books, under article 234, shall be subject to a duty of one per cent. on the amount thereof, which duty shall be paid by the auctioneer to the collector of provincial revenue out of the proceeds of the sale, at the cost of the seller, unless an express stipulation be made, in the conditions of sale, that such duty shall be paid by the buyer, in which case the duty shall be added to the price. R. S., 943b.

236. Moveable property, wares, merchandise, stocks in trade and assets of persons who have made an abandonment of property or to whose estate a curator has been appointed, are, when sold by auction,

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also chargeable with the duty of one per cent. mentioned in article 235. R. S., 944.

237. Whosoever, not being an auctioneer duly licensed as required by this law (such license being at the time in force), sells, by auction and by outcry, in this Province, any property, moveable or immoveable, effects, merchandise and stocks in trade, subject to auction duty, excepting such moveable property, effects, merchandize and insolvent's stock, mentioned in article 236, and whosoever causes such sale, whether he be proprietor or not of the property so sold, in violation of the terms of this law, incurs a penalty, for each contravention thereof, at the maximum, of the sum of one hundred and fifty dollars, and, at the minimum, of seventy-five dollars, in the discretion of the court pronouncing the same. R. S., 945, *in part*.

238. Any person who shall advertize any property for sale by him at auction over his signature, or in any other way advertize as an auctioneer, or who shall allow his name to be used in any newspaper, handbill, poster, or other mode of advertizing property for sale, without first having procured a license as an auctioneer, shall incur a penalty of seventy-five dollars for each such offence, which may be recovered by the collector of provincial revenue of the district, in the same manner as provided for other offences against this law; two-thirds of said penalty shall be paid into the consolidated revenue fund of the Province and the remainder to the collector of provincial revenue. R. S., 945, *in part*.

239. The penalty imposed by article 237 is equally incurred by any one who sells by auction and by outcry, as the assistant, agent, servant or partner of a licensed auctioneer, without being the holder of an assistant auctioneer's license under article 342. R. S., 945*a*.

240. Such person, selling without license, shall pay the duties on such sale, in the same manner, as if the sale had been under a license.

In addition to the penalty aforesaid, whosoever, without such license, makes a sale so prohibited, and who, within the thirty days following such sale, neglects to pay to the collector of provincial revenue or to his agent the amount of the duty on such sale, incurs a fine of thirty dollars for each day of such neglect. R. S., 946.

241. The amount of such duty and of such penalty may be recovered by the collector of provincial revenue, by the same prosecution, and, in default of payment of the amount in principal and costs, the contravening person is liable to an imprisonment of not more than three months and not less than one month, in the discretion of the court rendering the judgment. R. S., 947.

242. Every auctioneer shall, under a penalty of twenty dollars, keep in a book preserved for that purpose, a detailed statement, in the form prescribed by the Provincial Treasurer, of all sales made by him, and give to the said Treasurer all information by him required from time to time. R. S., 948.

243. The collector of provincial revenue, his deputy, and every person authorized to that effect by the Provincial Treasurer shall have, at all times, access to such book, for its examination; and every auctioneer, refusing to allow such examination, incurs a penalty of fifty dollars for each contravention. R. S., 949.

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244. Within the first ten days of each of the months of February, May, August and November of each year, every licensed auctioneer shall pay to the collector of provincial revenue or to his deputy the amount of duties levied on the sales by him made, and not paid over.

He shall also furnish to the collector of provincial revenue, or his deputy, a full return, with a report in detail, signed by himself or his assistant, chief clerk, agent or partner, stating the quantity of all moveable and immoveable property, effects, merchandize and stocks in trade, subject to duty which he has sold during the period not comprised in ihs last return, stating the amount of the sales of each day and the total amount of the sales made for each person, firm or estate.

If no sales have been made by such licensed auctioneer during said period, the same shall be mentioned in his return.

Such return shall, in both cases, be attested under the oath or affirmation of the person making the same. R. S., 950.

245. The collector of provincial revenue, or his deputy, may receive such oath or affirmation, and may put to the person making the same all such questions as he may think fit, to which questions the deponent or affirmant shall make answer, under the sanction of the same oath or affirmation. R.S., 951.

246. Every auctioneer and every person who sells by auction goods charged with the duty of one per cent, but which goods may be sold by a person other than an auctioneer, who neglects to pay the amount of the duties thereon, and to make the return mentioned in article 244, in the required form, incurs a penalty of thirty dollars for each day he neglects so to do. R. S., 952.

247. The amount of duties received, and not paid over, may be recovered with costs, in the same prosecution as that for the penalties.

The person, so in default, if he be a licensed auctioneer, becomes liable to have his license declared forfeited, and such license, from the day a notice to that effect is inserted by the collector of provincial revenue in the *Quebec Official Gazette*, is revoked, null and void, and no new license can be granted to such defaulter until payment be made of the amount due in principal and costs. R. S., 953.

248. In any action or prosecution against a defendant accused of having carried on, without the license required therefor by this law, the business of an auctioneer, the following is reputed *primâ facie* evidence of the auction sale :

1. The fact of having placed publicly, to be bid upon, any article, merchandize, or property, moveable or immoveable, before an assemblage of persons in order to induce them, or any number of them, to purchase the same :

2. The publishing, in any newspaper or hand-bill, of a notice of an auction sale by defendant ;

3. The exhibiting to view, in, on or near his house or dependencies, of any sign, printed matter, painting or writing, indicating, or of a nature to indicate, that he is desirous of acting as an auctioneer, or the fact that such has been exhibited with his knowledge or consent. R. S., 1052.

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SECTION III

PAWNBROKERS.

249. (1.) Pawning, for the purposes of this law, is the loan for a profit, either impliedly or expressly stipulated, in favor of him who lends a sum of money or anything convertible into money, or having a pecuniary value, in taking a pledge to secure the restitution of the sum of money or thing loaned, with or without the profit aforesaid.

2. He who loans and receives the pledge is a pawnbroker; he who receives the sum of money or thing loaned and gives the pledges is the pawner.

3. The business of pawnbroking is carried on when such loans are habitually made.

4. To establish that such business is carried on, it is not necessary that several loans secured by pledge should be proved, although such proof may be sufficient.

5. A single loan secured by pledge, preceded or followed by one or more loans, or accompanied or preceded or followed by circumstances which, in the opinion of the court charged with the cause, establish the habit of making such loans, or the intention of carrying on the business aforesaid, constitutes, for the purpose of this law, sufficient proof that the lender follows the business of pawnbroking. R. S. 828.

250. The issue of a pawnbroker's license by a collector of provincial revenue requires no other formality than the payment of the duty; and persons carrying on the business of pawnbroking in copartnership, in one and the same house, shop or place of business, require but one license. R. S., 868.

251. Whosoever carries on the business of pawnbroking, or whosoever lends on pawn, without having a license to that effect still in force, incurs a penalty of three hundred dollars. R. S., 954.

252. No person shall keep more than one house, shop or place of business, for taking goods in pawn on money loans under a single license, under a penalty of fifty dollars for each week during which he contravenes this article. R. S., 955.

253. Every pawnbroker shall expose, on the outside of the door of his house, shop or place of business, a sign bearing his name, with the word "pawnbroker," written or printed theron in large letters.

He shall also cause to be painted or printed in plain letters, and placed in a prominent part of his shop, a graduated scale of the rates the law allows him to charge on loans, and of the remuneration he is entitled to exact in certain cases on the memoranda or notes he is obliged to keep in the manner provided in the following articles, as well as mentioning those he is obliged to keep gratuitously, under a penalty in each of these cases of forty dollars for each week of his default so to do. (1). R. S., 956.

254. Before making a loan, he shall enter in a book, kept for that purpose, a description of the articles received in pawn, mention the sum loaned, the date of the month and year of the loan, the name of the pawner, the street he lives in, and the number of his dwelling, if it be numbered. R. S., 957.

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255. The entry must specify whether the pawner be a proprietor, tenant or sub-tenant, or if he be merely a boarder in the house, using the letter (P) if he be a proprietor, (T) if he be a tenant, (S) if he be a subtenant, (B) if he be a boarder. The name of the proprietor of the house, as given by the pawner if he be not the proprietor, shall also be entered. R. S., 958.

256. Every article on which a loan is effected shall be entered in a book kept monthly for that purpose, and shall be carefully kept.

The entries shall be made in the order of the receipt of the articles, and be designated by numbers; the first article received bearing No 1, and so on to the end of the month; and each memorandum mentioned in article 257 relative to the object placed in pawn, shall be inscribed with a number corresponding to the entry made in the book. R. S., 959.

257. When taking articles in pawn, the pawnbroker shall give to the pawner a memorandum or note, containing the description of the articles pawned, the name, place of residence of the pawner, the number of his house, and the indication of his quality, whether proprietor, tenant, subtenant or boarder, using the letters hereinabove indicated in article 255. On the back thereof the name and residence of the pawner shall be mentioned. R. S., 960.

258. The pawner shall take up such memorandum and, if he fail to do so, the pawnbroker is forbidden to keep the article in pawn. R. S., 961.

259. If the sum loaned be less than one dollar, the memorandum is given gratuitously; if it be for more than one and less than two dollars, the pawnbroker may exact one cent for giving the same; two cents, if it be two dollars or above that amount, but does not reach the sum of five dollars; four cents, if the sum loaned be five dollars or more, but does not reach twenty-five dollars; and seven cents, if the sum loaned be twenty-five dollars or more. R. S., 962.

260. No pawnbroker shall receive any money or valuable consideration whatever, for the keeping or storage of articles placed in pawn. R. S., 963.

261. No pawnbroker is obliged to return the articles placed in pawn, unless the pawner remit to him the memorandum, except in the case mentioned in article 268. R. S., 964.

262. A duplicate of the memorandum shall be attached to the articles placed in pawn, and, when the said articles are returned, the pawnbroker shall write, on each duplicate, the rate of profit made upon such articles, and keep one of these duplicates during one year. R. S., 965.

263. If, in the course of one year from the date of the pawning, the pawner offer to the pawnbroker the amount in principal of the loan, with the legal profits accrued, and deliver up, at the same time, the memorandum above-referred to, and the pawnbroker refuses without reasonable cause to return the articles by him detained, the pawner may declare the fact, under oath, before two justices of the peace of the district where the contravention has been committed, who shall summon before them the pawnbroker and the pawner, and examine them with their witnesses, if any they offer. R. S., 966.

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264. If the tender of the memorandum, of the principal amount of the loan and the profit, within the above-mentioned delay of one year, be proved under oath, the justices of the peace shall order the immediate restitution of the articles placed in pawn, the pawnbroker to receive such memorandum, principal and profits. R. S., 967.

265. If, notwithstanding such order so given to him and the offers to him made, the pawnbroker persist in his refusal to deliver the articles, or to pay the value thereof, according as the justices of the peace shall have adjudicated, they shall cause him to be imprisoned in the common gaol of the district in which the offence was committed, and he is there detained, until restitution of the articles pawned or until full payment of their value to the pawner. R. S., 968.

266. Any person who presents the memorandum to the pawnbroker, and offers him the payment of the loan, and the profits, is, in so far as regards the pawnbroker, held to be the proprietor of the articles placed in pawn. R. S., 969.

267. The pawnbroker, on receipt of payment and of the memorandum, shall hand over to him the articles pawned, and he is then relieved from all responsibility, unless he shall have been previously notified in writing by the real proprietor, forbidding him to deliver the said articles to any other than himself. R. S., 970.

268. In the case of such a notice being received by the pawnbroker, and likewise where the memorandum has been lost, destroyed or stolen from the pawner, or fraudulently obtained from him, (the articles remaining in the hands of the pawnbroker), the pawnbroker shall give to the person, who pretends to be the proprietor, a copy of the memorandum, with a form of an affidavit of the circumstances, which are stated to him ; which affidavit shall be sworn to by the pretended proprietor before a justice of the peace.

On verbal notice given, in the presence of a witness, by the pretended proprietor to the pawnbroker and to the pawner, of the time and place when and where they should attend before the justice of the peace, provided that one day elapses between the day of notice and that of attendance, the justice of the peace, at the time and place indicated, hears the parties and their witnessses under oath, and examines the documents produced, and awards the articles claimed to him who establishes his right of ownership. R. S., 971.

269. The judgment shall be in writing and shall be delivered by the justice of the peace to him who shall be declared to be the owner, who, upon delivering it in the presence of a witness to the pawnbroker, acquires the right to redeem the articles.

If the pawner make default, the statement under oath of the pretended proprietor of such article establishes his right of proprietorship. R. S., 972.

270. If, for some one of the reasons above-mentioned, the pawner cannot produce the memorandum, and no other person claims the articles pawned, his affidavit given, as hereinbefore provided, constitutes sufficient proof of his right of ownership.

In either case, the pawnbroker must return the articles on receiving what is due to him thereon, and, on his refusal to return them, he is subject to the penalties mentioned in article 289.

All these proceedings are without costs. R. S., 973.

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271. If the loan do not exceed one dollar, the pawnbroker has a right to receive two cents for the copy and affidavit: four cents, if the loan be more than one dollar and do not exceed five dollars; and, if the loan exceed five dollars, the pawnbroker shall receive five cents. R. S., 974.

272. The pawnbroker shall sell, by public auction, all articles pawned but not redeemed within one year from but exclusive of the day of pawning, without the formality of a judgment to that effect, notwithstanding article 1971 of the Civil Code. R. S., 975.

273. Before such public sale, a catalogue containing a list of the goods to be sold shall be published and be on view at the pawnbroker's place of business, containing the name and place of abode of the pawnbroker, a description of the goods separately, the months the goods were received in pawn, and the number of the pledge; and an advertisement giving notice of the intended sale and containing the name and abode of the pawnbroker, the month the goods were received in pawn and the lowest and highest numbers of the pledges, shall be inserted in two newspapers, one French and one English, at least three days previous to such sale; and, in the interval between the advertisement and the sale, the articles shall be exposed to view and open to public inspection. R. S., 976.

274. So long as such sale has not taken place, the pawner may redeem the articles pawned, on paying to the pawnbroker what is due on them, and the pawner's share of the expenses incurred by the publication mentioned in article 273, which share shall be the proportion which the sum loaned on the articles redeemed bears to the total sum loaned on the articles mentioned in such publication. R. S., 977.

275. If the articles be not separately described in the catalogue, the pawnbroker shall pay to the owner thereof a sum of not more than forty dollars, and not less than eight dollars, to be recovered in the same manner as penalties under this law. R. S., 978.

276. Every pawnbroker shall enter in a book, kept for the purpose, an exact account of the sales by auction of pawned articles, indicating therein the date when the articles were pawned, the name of the pawner, the date of the sale, the name and residence of the auctioneer, and the amount of such sale. R. S., 979.

277. If the amount of the sale exceed the loan, in principal and profits, the surplus shall be paid, after deducting the expenses of the catalogue and the auction fees incurred, to the person in whose name the articles were pawned, in the proportion of the amount of the sale to the total amount of the articles comprised in the catalogue, provided a demand for such surplus be made within three years from the sale. R. S., 980.

278. The pawner, or the person in whose name the articles were pawned, has a right to inspect the entry made of such sale, within the aforesaid delay of three years. R. S., 981.

279. If the pawnbroker made no such entry in such book, if he refuse an inspection of such entry to the pawner or his representatives, if the articles have been sold for a greater sum than is entered in such book, if he did not sell the articles in conformity with the foregoing provisions, if

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he refuse to pay the surplus of the sale, if the articles have been sold before the time limited, if they be not forthcoming or have become depreciated in value while so pawned,—in each such case, the pawnbroker incurs a penalty of forty dollars, and shall pay to the pawner, as damages, treble the amount loaned, to be recovered before two justices of the peace of the district, reserving to the pawner his ordinary recourse for an excess of damages, if such there be. R. S., 982.

280. No pawnbroker shall, except at public auction, purchase, either directly or indirectly, any articles pawned with him. R. S., 983.

281. No pawnbroker shall receive articles in pawn from a person appearing to be under fifteen years of age, or appearing to be under the influence of intoxicating liquor; or buy or take in pawn the memorandum or note aforesaid of any other pawnbroker; or receive in pawn on any Sunday or holiday, or on any other day before eight o'clock in the morning or after eight o'clock in the evening, except Saturday evening and the evenings preceding Good Friday and Christmas, when he may keep his shop open until ten o'clock at night. R. S., 984.

282. The justices of the peace, if they consider it necessary, may compel the pawnbroker to produce his pawnbook, memoranda, vouchers and all documents pertaining thereto in his possession; and he shall produce these vouchers and documents in the state they were in when the pawn was received by him. If he neglect or refuse to appear and produce these documents, he becomes liable to the penalties hereinafter imposed, unless he show sufficient cause to the contrary. R. S., 985.

283. On demand of the collector of provincial revenue, every pawnbroker shall exhibit to him all his books and the entries therein, and afford to him an examination of the same; such officer may, during business hours, visit and examine the shop of such pawnbroker. R. S., 986.

284. If any person pawn the property of another, without the authority so to do of the owner, any two justices of the peace may grant a warrant to cause the arrest of the offender, and, on conviction, he incurs the penalty hereinafter mentioned and forfeits the value of the property pawned, which is paid to the owner thereof, and may be recovered at the same time and in the same manner as the penalty. R. S., 987.

285. Every person, who knowingly receives in pawn from a journeyman mechanic any goods of any manufacture, either separate or mixed with others, or materials plainly intended for manufacturing purposes, when these goods or materials are in course of preparation but before completion and being exposed for sale, or any goods, materials, linens or apparel, which have been entrusted to any person to wash, scour, iron, mend, or manufacture, or for any purpose of a like nature, and is convicted thereof, shall forfeit the sum lent thereon, and forthwith restore the goods to the owner. R. S., 988.

286. In all the cases mentioned in article 285, if the owner establish by the oath or affirmation of a witness, before a justice of the peace of the district wherein the offence has been committed, that there is reason to believe that any person has taken to pawn any such goods, such justice of the peace may issue a warrant for searching, within the hours of

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business, the books, house, shop or any other place occupied by the person suspected; and, if such person refuse to exhibit to the officer charged with such warrant, and authorized to search his pledge-book, the goods pawned, or to allow admittance to such house, shop or other place, such officer may forcibly enter such house, shop or other place and dependencies and make such search where he thinks fit for the goods in question, taking care to do no wilful damage. R. S., 989.

287. If the pawned goods, or any part of them, be found, and the owner thereof establish by proof, to the satisfaction of the justices of the peace, by the oath or affirmation of a witness or by the admission of the suspected person, that they so belong to such owner, the justices of the peace shall cause the same to be forthwith returned to such owner, and the occupant of such house, shop and other place shall incur the penalty mentioned hereinafter. R. S., 990.

288. The provisions of this law, regarding pawnbrokers and pawners, extend to their representatives; but the latter shall not be liable to any penalty, unless incurred through their own acts. R. S., 991.

289. Every contravention of the above articles, relative to pawnbrokers, wherein a penalty is not thereby specially imposed, is punishable by a fine of not less than ten dollars, or more than fifty dollars, in the discretion of the court. R. S., 992.

290. No fee shall be paid for any summons or warrant issued by a justice of the peace, in conformity with this law, when the same has reference to goods pawned. R. S., 1061.

SECTION IV.

PEDDLERS.

291. The word "peddler" comprises not only travelling salesmen who go from town to town, but also those who peddle within the limits of one and the same city, town, village or parish. R. S., 828.

292. Every peddler is obliged to take out a license from the proper collector of provincial revenue, without the observance of any other formality than the payment of the duty; but the necessity of obtaining such license has not the effect of preventing a licensed peddler from employing a servant to accompany and assist him in carrying about his bales of goods or merchandise without being obliged to take out a second license for such servant. R. S., 809.

293. No enactment of this law obliges a peddler to take out a license, nor does it apply to persons employed by a temperance society, or by a benevolent or religious society in this Province, for the purpose of peddling and selling temperance tracts and other moral and religious publications under the direction of such society.

2. No person is obliged to take out a license to peddle and sell:

Acts of the Legislature;

Prayer books and catechisms;

Proclamations, gazettes, almanacs or other documents printed and published by authority;

Fish, fruit, fuel, (firewood, coal and coal oils,) and victuals, excepting tea and coffee;

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Goods, wares and merchandize, when they are peddled and sold by the actual maker or worker, being a British subject and a resident of this Province, or by his children, apprentices, agents or servants, other than drugs, medicines and patent remedies.

The following persons are not obliged to take a peddler's license :

Tinkers, coopers, glaziers, harness repairers, or other persons carrying on the trade of repairing kettles, casks, house-hold furniture and utensils, to go along the highway and carry on their business ;

Hucksters, or persons having stalls or stands on markets, in cities or towns, for the sale of fish, fruit, victuals, or goods, wares and merchandize, in such stalls or stands, on their complying with the police regulations of the locality. R. S., 870.

294. Every hawker, peddler, petty chapman or trading person or persons going from town to town or from house to house in this Province, to sell or expose for sale any goods, wares or merchandize, with the exception of those exempt by article 293, or selling such goods, wares or merchandize upon the street, without being the holder of a peddler's license, as hereinabove described, is liable to a fine of not less than five nor more than forty dollars for each article which he exposes for sale, sells, barters or delivers, under any title whatsoever.

The judgment inflicting such fine may also order the confiscation of the goods and wares of such hawker or peddler and his horse and waggon ; and, if such confiscation be ordered, the collector of provincial revenue shall have the articles so confiscated sold by private sale or by auction according to the instructions given him by the Provincial Treasurer, to whom he shall remit the moneys realized. R. S., 993.

295. Every collector of provincial revenue or person authorized by him, every mayor, secretary, secretary-treasurer or clerk of any municipality, every constable or officer of the peace, may arrest and detain every peddler trafficking without a license as aforesaid, and bring him before any justice of the peace of the place where such contravention has been committed, or before any magistrate having jurisdiction in the district under this law, for the purpose of immediately prosecuting him therefor ; but he shall not be detained, without warrant of arrest, for any longer space of time than forty-eight hours ; or such collector or person may, at his option, seize the goods and wares found in the possession of such peddler, subject to the confirmation of such seizure by the court, without arresting the peddler ; and the goods and wares so seized shall, under such confirmation of the court, be sold as provided in article 294. R. S., 994.

296. Every licensed peddler, who refuses to exhibit his license to such collector of provincial revenue, or person authorized by him, or to such mayor, setretary, secretary-treasurer, clerk, constable or peace officer, or to any person to whom he offers goods for sale, upon his request, and after the lapse of a reasonable delay, may, in the same manner, be arrested and brought before any such justice of the peace and be detained until he has exhibited his license ; provided that, in either case, he be not detained without warrant of arrest for more than forty-eight hours.

Such peddler is liable to a penalty of five dollars for each refusal to exhibit his license.

The jugdment inflicting such fine may also order the confiscation of the goods and wares of such peddler, and the sale shall be governed by the provisions of the second clause of article 294. R. S., 995.

297. Every peddler who leases or lends his license, or traffics with a

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license granted to another person or with a license in which his own name is not inserted as the name of the person to whom such license has been granted, incurs a fine of forty dollars for each contravention. R. S., 996.

298. Whenever a prosecution is instituted against a peddler at the request of a municipal council, one half of the plaintiff's costs is payable by the municipality and one half of the fine imposed, in the event of a condemnation, belongs to the municipality. R. S., 996b.

299. Notwithstanding the provisions of article 164, the collector of provincial revenue, in all cases of prosecution of peddlers for selling or exposing their wares for sale without license, may exact the deposit of a reasonable amount to cover costs. R. S., 1028, *in part*.

SECTION V.

FERRIES

300. No license is required to carry on the business of ferryman between the banks of the river St. Lawrence, except between the city of Montreal and the town of Longueuil, between the said city and Laprairie, and between Lachine and Caughnawaga, at the places and limits indicated in the license by the collector of provincial revenue. R. S., 871.

301. No provision of this law applies to the proprietors or masters of any vessel, plying between two ports of this province, or regularly entered or cleared by the officers of Her Majesty's customs at any such ports, or in any way affects any privilege granted by the Legislature of the late Province of Lower Canada, of the late Province of Canada, or of this Province, to the proprietors of any bridge, or to any railway company. R. S., 872.

302. No license for a ferry can be granted for a period exceeding twelve months, unless it be by public competition, and to persons who give the security required by the Lieutenant-Governor in Council, after notice inserted at least four times in the course of four weeks in the *Quebec Official Gazette* and in one or more newspapers published in the district in which such ferry is situate, and, if there be no newspapers published in the district, then in the nearest adjoining district in which a newspaper in published; and no ferry is leased and no license is granted in that respect for a period exceeding ten years. R. S., 873.

303. The Lieutenant-Governor in Council may make and revoke, as required, the regulations he deems proper for the following purposes :

1. To establish the extent and the limits of ferries ;

2. To define the modes and conditions of the issuing of licenses, the time for which they are issued, and the duty or sum payable for such licenses ;

3. To fix the tariffs and rates for which persons and goods shall be crossed on such ferries and the manner in which such tariffs and rates shall be published, and the places of such publication ;

4. To fix the time, the hours and the fractions of hours, at which the vessels employed on such ferries shall cross and recross or start from one side or the other of such ferry for that purpose ;

5. To impose fines for every contravention of such regulations.

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Such regulations have, during the time they are in force, the same effect as if they formed part of this law. R. S., 997.

304. The Provincial Secretary shall cause to be published all regulations established, as aforesaid, in the French and English languages, in the *Quebec Official Gazette*, at least three times during the three months which follow their date, and every number of the Gazette containing a copy of such regulations or any of them, is proof of their existence. R. S., 998.

305. The proprietor, master or person in charge of any vessel employed for the transport of persons or goods over a ferry as above-stated, is considered to have acted as ferryman, within the meaning of the law, and is liable to all the fines imposed under its authority, if he infringe the same by acting in such manner. R. S., 999.

SECTION VI

BILLIARD TABLES

306. The words "billiard tables", in addition to their proper meaning, mean also boards used for the games of pigeon-hole, mississippi, pool, bagatelle or other games. R. S., 828.

307. To obtain a license to keep a billiard table, the applicant shall pay to the proper collector of provincial revenue, a fee of five dollars, of which three dollars shall be remitted to the Provincial Treasurer, and two shall be retained by the collector. R. S., 874, *in part*, 878, *in part*.

308. Any one who keeps for gain a billiard table, without having a license in force to that effect, renders himself liable to a fine of fifty dollars for each table so kept by him. R. S., 1000.

309. All sums of money or value paid, furnished or promised, directly or indirectly, by those who play upon such billiard tables to the keeper of the same, his employees or representatives, for so playing on the same, is considered gain within the meaning of this law. R. S. 1001.

310. Every person, holding a license for a billiard table, shall cause to be painted or engraved, upon such table, in visible and legible characters, the number of the license by virtue of which he is authorized to keep such table; and he shall also cause the said license to be exposed, in a prominent and visible manner, in the apartment in which such billiard table is placed. R. S., 1002.

311. Every such person incurs a fine of fifty dollars for each week during which he contravenes the provisions of article 310; all persons likewise, who intentionally remove, deface or conceal any number so painted or engraved, incur a like fine of fifty dollars for each contravention. R. S., 1003.

312. No person, holding a license for a billiard table, and who is also licensed to sell intoxicating liquors, shall knowingly allow any apprentice, school boy or servant to play thereon under a penalty of a fine of seventy-five dollars for the first offence, and one hundred and fifty dollars for each subsequent offence.

A like penalty shall be incurred by any person holding a billiard table

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license who allows any one to play thereon for money or for any stake whatsoever. R. S., 1003*a*.

313. No hotel or restaurant proprietor, having in his establishment any billiard tables, shall permit play thereon during any part of the whole of Sunday, and he shall during such time keep the room, in which such tables are, closed, under a penalty of a fine of thirty dollars for the first offence and one hundred dollars for every subsequent offence. R. S., 1003*b*.

314. The proof that a person exhibits, or exposes to view, or permits that there should be exposed to view, in, or near a house or its dependencies, belonging to, or occupied by him, any sign, painting, writing, or printed matter, indicating or tending to indicate that a billiard table is kept in such house, or its dependencies, is *primâ facie* evidence that such person keeps a billiard table for gain. R. S., 1053.

315. Proof that a billiard table is kept in an inn, temperance hotel, railway buffet or restaurant establishes that such table is thus kept for gain. R. S., 1054.

316. If the conviction be for having kept a billiard table without a license, or for any contravention of articles 308, 310 and 311, the fine and cost may be levied by the seizure and sale of any billiard table in possession of the defendant at the time of the rendering of the judgment, whether the defendant be or be not the proprietor thereof. R. S., 1070.

SECTION VII.

POWDER MAGAZINES AND THE SALE OF POWDER.

317. The word "powder" means every explosive substance, whether powder for cannon or gunpowder, or mining powder, or other powder, or nitro-glycerine, or any other substance of that nature, however prepared or offered for sale, either loose or in barrels or otherwise, or when combined in any quantity whatever in an article of commerce, as cartridges, fire-crackers, fire-works, rockets or others. R. S., 828, *in part*.

318. The words "powder magazine" mean every building used for the storage or keeping of any quantity of powder, exceeding in weight twenty-five pounds. R. S., 1005.

319. Every person keeping a magazine for the storage of powder, or who sells and holds for sale any quantity of powder, must obtain from the collector of provincial revenue a license to that effect. R. S., 875.

320. Powder magazines shall be constructed in the manner and at the places determined upon for each such magazine by the Lieutenant-Governor in council, with the consent of the corporation or council of the municipality within the limits of which such magazine is situate; and no license shall be granted for keeping a powder magazine unless such magazine be constructed in conformity with an order of the Lieutenant-Governor in council.

Before the renewal in any year of a powder magazine license, issued in accordance with article 319, the magazine for which such license is sought shall be inspected by an inspector appointed by the Government, the cost of such inspection to be paid by the owner of such magazine. The renewal of the license shall be in the discretion of the Provincial Treasurer. R. S., 876.

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321. Any person who keeps or makes use of a powder magazine for the storage of powder, without a license, shall be liable to a penal prosecution under which he may be condemned to a fine of five hundred dollars, for all contraventions of this article committed up to the time of the institution of such prosecution, if it be the first, and, in case of a repetition of the offence, he may be again prosecuted and condemned to pay a like fine of five hundred dollars for all contraventions committed in the interval between the first prosecution and the second, and so on from one prosecution to another. R. S., 1004.

322. No person shall keep for his own use, and not for sale or storage, in any building other than a powder magazine, any quantity of powder weighing more than ten pounds; and in keeping it he shall store it in a metal box or case, at a sufficient distance from all inflammatory agents, such as a lamp, candle, light, gas, stove-pipe, hearth or fire, (and the above enumeration shall not be limitative), or otherwise he shall be liable to a penal prosecution, in which he may be condemned to the payment of a fine of not less than thirty nor more than one hundred dollars for each offence, in the discretion of the court. R. S., 1006.

323. No provision of this law applies to the powder magazines of Her Majesty, nor does it affect the transportation, by the troops of Her Majesty on military service, of the munitions of war, going into or coming from powder magazines of Her Majesty. R. S., 1007.

324. Every person, who sells or keeps for sale, whether by wholesale or retail, any quantity of powder, without having obtained a license to that effect, shall render himself liable to a fine, in the discretion of the court, of not less thai ten nor more than sixty dollars for each sale, and to a similar penalty for keeping powder for sale. R. S., 1008.

325. Every person keeping powder for sale shall constantly keep, conspicuously designated, the part or parts of the building where the powder is lodged, and keep placed, above the entry of such building, a sign bearing these words: "Licensed to sell powder," under a penalty of a fine of five dollars for each week during which he contravenes this article. R. S., 1009.

326. The Lieutenant-Governor in Council may, from time to time, make the necessary regulations, conformably to the provisions of this law, for the reception, transportation, storage and delivery of powder. R. S., 1010.

327. No quantity of powder shall be stored, kept, removed, received or delivered, except in conformity with the provisions of this law, and the regulations made or which shall be made by virtue of article 326. R. S., 1011.

328. Such regulations may impose penalties for every infraction or for all infractions of the provisions of this law relative to powder, for which no penalty has been imposed. R. S., 1012.

329. Every proprietor or lessee of any powder magazine is personally liable for all the penalties imposed for the contravention of any regulations made by virtue of this law, respecting the removal of powder coming from or going to such powder magazines. R. S., 1013.

330. The Lieutenant-Governor in Council may, through the interme-

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diary of any functionary or of such person as he may name for that purpose, acquire from the Government of the Dominion of Canada or from any person whomsoever, or he may cause to be built, one or several powder magazines within the limits of this Province. R. S., 1014.

331. The Lieutenant-Governor in Council may also appoint or employ the functionaries or persons he deems necessary for the care, maintenance and the general service of every powder magazine, with such remuneration as he considers reasonable. R. S., 1015.

332. Such powder magazines may be kept and guarded, for the benefit of the Province, by the functionaries or persons mentioned in article 331, or may be leased to private persons or to companies, on the conditions and in the manner determined upon by the Lieutenant-Governor in Council, in both cases, in conformity with the provisions of this law. R. S., 1016.

333. The rates which may be demanded and received for the storage of powder in such magazines, are fixed by the Lieutenant-Governor in Council R. S., 1017.

334. The Lieutenant-Governor in Council may, on such terms and conditions as he deems fit, authorize the Provincial Treasurer to pay a subsidy to one or more persons, to assist in the construction of any powder magazine, near to, but outside the radius of five miles of the cities of Quebec and Montreal, erected under the provisions of this section, provided that such subsidy shall not exceed the amount of one-third of the price of the powder magazine, and that the plans, specifications, demand of tenders and the contract for such building, shall have been previously approved of by the Commissioner of Public Works. R. S., 1018.

335. The Lieutenant-Governor in Council may, from time to time, but on the conditions and under the regulations he deems fit, permit the storage of powder in quantities exceeding one hundred pounds in the vicinity of public works, railways, canals, or other similar works of a public nature, or, in the country parts generally, and exempt such storage, in the case of each of such works, from the operations of the provisions or of any one of the provisions of this law. R. S., 1019.

336. The Lieutenant-Governor in Council may, on such conditions and under such regulations as he deems fit, permit the storage of gunpowder and other explosives in the vicinity of any quarry, although the same may be in proximity to cities or towns. R. S., 1020.

337. All provisions of the Municipal Code, whereby any municipalities are empowered to regulate the storage of gunpowder or any other matter, shall apply only in so far as such storage or such other matter is not, or shall not, at any time hereafter, be regulated by this law or by any regulations made in virtue thereof. R. S., 1091.

SECTION VIII

CIRCUSES AND MENAGERIES

338. Any person opening a circus or exhibiting a menagerie shall first obtain a license therefor from the collector of provincial revenue.

Such license shall specify the number of days for which the duties have been paid, and ceases with the last of such days.

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One license suffices for the opening and exhibition, at the same place, of a circus and of a menagerie, if they form the same troop.

All the provisions of this law which relate to circuses apply equally to organizations known as Wild West Shows and the like. R. S., 877.

339. No person, not holding a license to that effect, shall open or exhibit a circus, menagerie or side-shaw, under a penalty of a fine of two hundred dollars for each performance, representation or exhibition. R. S., 1021.

340. Every person, opening or exhibiting a circus or menagerie, shall show his license to the collector of provincial revenue, or to one of his deputies, or to any person authorized to that effect by the collector of provincial revenue, on a simple demand, verbal or written, on his part, — and, in default of so doing, such person is held to have no license, and is punishable accordingly. R. S., 1022.

341. The collector of provincial revenue or one of his deputies, or any other person authorized to that effect by such collector may, on a warrant obtained on satisfactory proof by affidavit, and signed by a judge of the Superior Court, a district magistrate, or a justice of the peace, seize the animals, goods, and effects forming part of a circus or menagerie, for the opening or exhibition of which no license shall have been taken, or for which there has been a refusal to show the required license ; and may, without any other preliminary judgment or formality, sell and adjudge, at public auction, the animals, goods and effects so seized for the amount of the fine incurred, and costs of the sale. R. S., 1023.

SECTION IX.

FEES AND DUTIES PAYABLE ON LICENSES.

342. In addition to a fee of one dollar on the granting of each license, except in the case of billiard tables, in which the fee is regulated by the provisions of article 307, the duties comprised in the following tariff shall be payable by the applicant therefor to the proper collector of provincial revenue, preliminary to the granting thereof. R. S., 878.

TARIFF OF DUTIES ON LICENSES.

1. — AUCTIONEERS' LICENSES.

1. On each auctioneer's license :
   - *a.* In each of the cities of Montreal and Quebec, one hundred and thirty dollars ;
   - *b.* In any other city, one hundred dollars ;
   - *c.* In every town, seventy dollars ;
   - *d.* In every village or parish, thirty dollars ;

2. On all separate licenses, taken out by an auctioneer, for the employment of an assistant, agent, servant or partner as crier :
   - *a.* In each of the cities of Montreal and Quebec, fifty dollars ;
   - *b.* In any other city and town, forty dollars ;
   - *c.* In any other municipality, twenty dollars ;

3. On each license for an additional revenue district where there is no auctioneer, twenty dollars ;

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4. On each license for an additional municipality where there is no auctioneer, ten dollars.

II. — PAWNBROKERS' LICENSES.

On each pawnbroker's license :

a. In the city of Montreal, one thousand dollars ;
b. In the city of Quebec, five hundred dollars ;
c. In any other municipality, two hundred and fifty dollars.

III. — PEDDLERS' LICENSES.

On each license for a peddler, fifty dollars.

IV. — FERRY LICENSES.

For each license for a ferry, such sum as may be fixed by the Lieutenant-Governor in Council under articles 302 and 303.

V. — BILLIARD TABLE LICENSES.

On each license for a billiard-table, bagatelle, pigeon-hole, or mississippi-board, twenty-five dollars.

VI. — POWDER MAGAZINE LICENSES AND LICENSES FOR SALE OF POWDER.

1. For each license to keep or use a powder magazine, one hundred and fifty dollars ;

2. For each license for the sale of powder or to keep it on sale :

a. In the cities of Montreal and Quebec :
  1. By wholesale and retail, thirty dollars ;
  2. By retail only, twelve dollars ;
b. In every other city :
  1. By wholesale and retail, fifteen dollars ;
  2. By retail only, eight dollars ;
c. In every town :
  1. By wholesale and retail, eight dollars ;
  2. By retail only, four dollars ;
d. In any other part of the Province :
  1. By wholesale and retail, four dollars ;
  2. By retail only, two dollars.

A quantity of twenty-five pounds or more, or a dozen canisters of one pound each, sold at any one time, is deemed to be sold wholesale, and a less quantity is deemed to be a sale by retail.

VII. — CIRCUS AND MENAGERIE LICENSES.

For each license to open and exhibit a circus or equestrian representation, menagerie or caravan of wild animals :

a. In the cities of Montreal and Quebec, and within a radius of three miles of each of these cities, three hundred dollars for each day of the representation or exhibition of the same : — and for every side-show, thirty dollars for each day ;
b. In other parts of the Province, one hundred and fifty dollars for each day : — and for every side-show, fifteen dollars for each day. R. S., 878, *in part*.

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PART III

SPECIAL PROVISIONS

RELATING TO THE DUTIES AND PRIVILEGES OF COLLECTORS OF PROVINCIAL REVENUE, AND TO THE ADMINISTRATION OF THE LAW

343. Each collector of provincial revenue, personally or by his deputy or any other person by him appointed to that effect, shall, within the limits of his district, make a careful search for infringements of this law, and, for that purpose, he shall visit at least once a year :

1. Every powder magazine and every place where powder is kept for sale or on storage ;

2. Every shop or place of business of a pawnbroker and auctioneer ;

3. Every saloon or public or private place, where any billiard table, pigeon-hole board, mississippi board, or bagatelle board, is kept or supposed to be kept for gain ;

4. Every steamboat or vessel on board of which are sold intoxicating liquors ;

5. Every inn, restaurant, temperance hotel, railway buffet and liquor shop. R. S., 1024.

344. Every master of a house, steamboat or vessel, of which the visit and inspection are hereinabove authorized, refusing admission to such collector of provincial revenue, his deputy, or other person authorized by him or a justice of the peace anywhere, and any other person hindering the visit and inspection in question, or molesting a policeman in the execution of his duty relative to these objects, becomes liable to a fine, not exceeding fifty dollars and not less than eight dollars, for each contravention ; and the provisions contained in the first part of this law respecting the prosecution of infractions thereof apply to this article. R. S., 1025.

345. All duties levied under this law shall be paid by the collector of provincial revenue and all other functionaries charged with their collection, under the same law, to the Provincial Treasurer, and shall form part of the consolidated revenue fund ;—any proportion thereof may be applied, from time to time, by the Lieutenant-Governor in Council, to the payment, under the direction of the Provincial Treasurer, of all expenses incurred for the carrying out of this law and the costs incurred in actions instituted for contraventions of the same. R. S., 1075.

346. Every collector of provincial revenue, and every other functionary receiving public money, is accountable for, and shall pay and account for to the Provincial Treasurer, into whose hands he shall pay, at the periods and in the manner ordered by the latter, all sums of money which

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he shall have levied arising from the duties imposed by this law, as well as for all other sums of money, which the law obliges him to pay to the said Treasurer, and which belong to the provincial revenue and form part thereof. R. S., 1087.

347. In rendering his accounts to the Provincial Treasurer, the collector of provincial revenue shall transmit, in addition to the information which he is required to give, a statement showing the sums received by him for duties on auction sales, and the number of licenses he has issued. R. S., 1088.

348. With the consent and approval of the Provincial Treasurer, each collector of provincial revenue may appoint one or more duties for the performance of his duties under this law or any other law; and such deputies, as well as the collector of provincial revenue, shall take and subscribe the oath required by article 748 of the Revised Statutes in the manner therein prescribed. R. S., 1089.

349. Notwithstanding the provisions of article 746 of the Revised Statutes and of articles 64, 101, 218, 219, 221, 238 and 342 of this law, it is lawful for the Lieutenant-Governor in Council to replace, by a salary to be fixed by him for such time and in respect of such collectors of revenue as he sees fit, the emoluments mentioned in the said articles. R. S., 1089*a*.

350. An extra sum of one hundred dollars, annually, may be granted by the Lieutenant-Governor in Council to any collector of provincial revenue, for travelling expenses, in addition to his ordinary salary. R. S., 1090.

351. The Provincial Treasurer, whenever he shall deem it conductive to the better administration and carrying out of the revenue laws, may, from time to time, at the public expense, cause to be prepared, printed and distributed, in the English and French languages, or in either, and in such numbers and manner as he may see fit, pamphlets containing the present law and such acts or portions of acts, regulations of the Lieutenant-Governor in Council, and instructions from the Treasury Department, as he may deem desirable.

Such pamphlets shall be deemed to be printed for convenience only, and nothing contained therein shall prevail against the regularly promulgated versions of the law or the meaning or construction thereof. R. S., 1092.

352. Any sum that may become due to the Crown, in virtue of this law, shall constitute a privileged debt, ranking concurrently with any other privilege of the Crown immediately after law costs. R. S., 1092*a*.

353. The forms contained in the schedule annexed to this law, which schedule is part of the same, or other forms to the like effect, shall be sufficient for the purposes for which they are intended. R. S., 1093.

TRANSITORY PROVISIONS.

354. This act is substituted for the twelfth section of chapter fifth of the fourth title of the Revised Statutes, which section is repealed, as are all provisions which amend the same.

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355. Licenses issued under the repealed law shall continue to exist for the time for which they have been granted.

356. All orders in council and regulations made and passed under the repealed provisions shall, in so far as they are not inconsistent with this law, remain in force until they are repealed, modified or replaced under this law.

357. The officers and other employees, in office at the time of the coming into force of this law, shall continue to perform the duties of their office without new appointment, until replaced under the provisions of this law.

358. The above repeal shall not have the effect of remitting the penalties incurred in virtue of the repealed provisions, but such penalties shall be imposed and the convictions enforced under the provisions of the repealed law, as if this law had not been passed.

359. Judgments rendered under the repealed law shall be enforced, and prosecutions pending at the time of the coming into force of this law shall be continued to judgment and execution, under the said repealed law, as if this law had not been passed.

360. This act shall come into force on the day of its sanction.

SCHEDULE

FORM A.

FORM OF CERTIFICATE FOR OBTAINING A LICENSE TO KEEP AN INN OR RESTAURANT.

Province of Quebec,
District of . }

We, the undersigned municipal electors of the of , in the county of , do hereby certify that , of , in the county of , in the district of , who is desirous of obtaining a license to keep at , is personally known to each of us; that he is honest, sober and of good repute, and is a fit and proper person for keeping a house of public entertainment; that we have visited (*or* are acquainted with) the house and premises situate at , for which the license is required, and that he has, in and on the same, bedding for travellers, stabling, and the other articles required by law.

We further certify that a house of public entertainment is required at the place where the said house is situated.

Given under our hands, at , this day of , in the year one thousand nine hundred .

{ Municipal Electors of .

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FORM B.

FORM OF AFFIDAVIT TO BE MADE BY A PERSON DESIROUS OF OBTAINING A LICENSE TO KEEP A HOUSE OF PUBLIC ENTERTAINMENT.

District of . }
Province of Quebec, }

I, , of , in the county of , in the district of , who am desirous of obtaining a license to keep situated at . being duly sworn, do make oath and say, that I am, in all respects, duly qualified according to law to keep a house or place of public entertainment.

Sworn before me, at ,
this day of one
thousand nine hundred

(*Signature*).

J. P. for the district of

FORM C.

FORM OF CONFIRMATION OF CERTIFICATE UNDER ARTICLE 17.

The foregoing certificate having been this day submitted to the municipal council of (*or* corporation of) and the said council (*or* corporation) being duly assembled and having deliberated thereon, confirms the same in favor of therein mentioned.

Signed at , this day of , one thousand nine hundred.

P. Q., *Mayor.*
R. S., *Secretary.*

FORM D.

FORM OF AFFIDAVIT TO BE MADE BY A PERSON DESIROUS OF OBTAINING A LICENSE WITHOUT BEING OBLIGED TO PRODUCE A CERTIFICATE OF ELECTORS.

Province of Quebec, }
City of . }

I, of the city of in the district of who am desirous of obtaining a license to keep , situated at in the said city, being duly sworn, do make oath and say that I am, in all respects, duly qualified according to law to keep such , and, further, that I have held a license to keep such for the past twelve months; have complied with all the conditions of the Quebec License Law, applicable to such licensed premises, and have not been convicted of any infringements thereof, and I have signed.

Sworn before me, at } (*Signature.*)
this day of 19 }

N. B.—(For additional forms Vide 63 Vic., ch. 12.)

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3.—Jurors and Juries

(*Chapter Sixth of the Revised Statutes of Quebec.*)

SECTION I

DECLARATORY AND INTERPRETATIVE

2617. The present chapter may be designated and cited as the "Jury Law of the Province of Quebec".

2. In this chapter, the word "municipality" includes villages, towns and cities and every muncipal corporation whatsoever; and the words "the court" shall mean the court, having criminal of civil jurisdiction, (as the case may be) which shall be sitting at the time and place when and where any provision of this chapter, in which those words occur, requires to be applied and enforced.

3. This chapter shall apply to criminal matters only, except where the context plainly extends the provisions thereof to other matters.

SECTION II

QUALIFICATIONS AND DISQUALIFICATIONS OF JURORS

1.—*Persons qualified to be Grand Jurors*

2618. Subject to the exemptions and disqualifications hereinafter provided for, the following persons are qualified to act, and, when duly chosen and summoned, are bound to serve as grand jurors.

1. Every male person, domiciled in a town or city, containing at least twenty thousand inhabitants, or in the *banlieue* thereof, who is entered upon the valuation roll as proprietor of immoveable property of a total value above three thousand dollars, or as occupant or tenant of immoveable property of an annual value above three hundred dollars;

2. Every male person, domiciled within the limits of any municipality in the counties of Gaspé and Bonaventure, and entered upon the valuation roll as proprietor of immoveable property of a value above one thousand dollars, or occupant or tenant, for an annual value above one hundred dollars;

3. In all other parts of the Province, every male person domiciled within thirty miles of any municipality, any part whereof is situate within thirty miles of the place of holding the court in the district in which he resides, who is entered upon the valuation roll, as proprietor of immoveable property of a total value above two thousand dollars, or as occupant or tenant, of immoveable property of an annual value of above one hundred and fifty dollars.

2.—*Persons qualified to be Petit Jurors*

2619. Subject to the exemptions and disqualifications hereinafter provided for, the following persons are qualified to act, and, when duly chosen and summoned, are bound to serve as petit jurors.

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1. Every male person, domiciled in a town or city, containing at least twenty thousand inhabitants, or in the *banlieue* thereof, who is entered upon the valuation roll as proprietor of immoveable property of a total value of at least twelve hundred dollars, but not more than three thousand dollars, or as occupant or tenant of immoveable property of an annual value of at least one hundred dollars but not more than three hundred dollars;

2. Every male person, domiciled within the limits of any municipality in the counties of Gaspé and Bonaventure, and entered on the valuation roll as proprietor of a total value of at least four hundred dollars and not more than one thousand dollars, or occupant or tenant for an annual value of at least forty dollars and not more than one hundred dollars;

3. In all other parts of the Province, every person, domiciled within the limits of any municipality, whereof any part is situated within thirty miles of the place of holding the court in the district in which he resides, who is entered upon the valuations roll as proprietor of immoveable property of a total value of at least one thousand dollars, but not more than two thousand dollars, or as occupant or tenant of immoveable property of an annual value of at least eighty dollars, but not more than one hundred and fifty dollars.

3. — *Persons not qualified to be Jurors.*

2620. The following persons are disqualified from serving as grand or petit jurors, respectively:

1. Persons who are not qualified as such under the preceding articles of this section;

2. Persons under the age of twenty-one years;

3. Persons afflicted with blindness, deafness, or any other physical or mental infirmity incompatible with the discharge of the duties of a juror;

4. Persons who are arrested or under bail upon a charge of treason or felony, or who have been convicted thereof;

5. Aliens.

4. — *Persons exempt from being Jurors.*

2621. The following persons are exempt from serving as jurors:

1. Members of the clergy;

2. Members of the Privy Council, or of the Senate, or of the House of Commons of Canada, or persons in the employ of the Government of Canada;

3. Members of the Executive Council, Legislative Council or Legislative Assembly of Quebec, or persons in the employ of the Government of Quebec, or of the Legislature of this Province;

4. Judges of the Supreme Court, of the Court of Queen's Bench and of the Superior Court, judges of the sessions, district magistrates and recorders;

5. Officers of Her Majesty's courts;

6. Registrars;

7. Practising advocates and notaries;

8. Practising physicians, surgeons, dentists, and druggists;

9. Professors in universities, colleges, high schools or normal schools and teachers;

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10. Cashiers, tellers, clerks and accountants of incorporated banks ;

11. Clerks, treasurers and other municipal officers of the cities of Quebec and Montreal ;

12. Officers of the army or navy on active service ;

13. Officers, non-commissioned officers and privates of the active militia ;

14. Pilots duly licensed ;

15. Masters and crews of steamboats and masters of schooners, during the season of navigation ;

16. All persons employed in the running of railway trains ;

17. All persons employed in the working of grist mills ;

18. Firemen ;

19. Persons above sixty years of age.

20. The persons mentioned in section twenty-three of the act fourth and fifth Victoria, chapter ninety, to wit : the members of the council and of the board of arbitration of the Montreal Board of Trade.

SECTION III.

EXTRACTS FROM VALUATION ROLLS, CONTAINING THE NAMES OF PERSONS QUALIFIED TO BE JURORS.

2622. Whenever it is the duty of the sheriff to renew the list of jurors, the clerk or secretary-treasurer of every municipality is obliged, when the said sheriff requires it of him in writing, to deliver gratuitously, within the month following such demand, an extract from the valuation roll in accordance with form A of this chapter, containing the names of all persons inscribed on such roll, domiciled in the municipality, being qualified as grand and petit jurors.

2623. Every year, during the month following the homologation or revision of the valuation roll, in any municipality situated wholly or partly within thirty miles of the place in which is held the court of the district in which such municipality is situated, it is the duty of the clerk or the secretary-treasurer, (when the extract above mentioned is not asked for by the sheriff), to deliver to the latter gratuitously a supplementary list, in accordance with form B of this chapter containing :

1. The names of persons who have, since the last extract or supplement, become qualified as jurors ;

2. The names of all persons who, to his knowledge, have since the forwarding of the last extract or of the previous supplement, died, or
No longer reside within the limits of the municipality, or
Have become disqualified or exempt from serving as jurors ; and

3. The names of all persons erroneously entered upon or omitted from previous extracts or supplements.

2624. In giving the names of the persons who have ceased to be jurors since the last extract or previous supplement, the clerk or secretary-treasurer shall identify them correctly by indicating their status, amount of assessment and domicile when their names were for the first time forwarded to the sheriff at the time of the extract or since.

2625. The clerk or secretary-treasurer shall, by making the necessary inquiries, when the valuation roll is being prepared, ascertain what per-

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sons within his municipality are disqualified or exempt from serving as jurors, and he shall not, under penalty of a fine of not less than one dollar or more than twenty dollars for each name, knowingly include in any extract or supplement to be furnished to the sheriff the name of any person so disqualified or exempt under article 2620 and 2621.

2626. Such extract and supplement shall give :

1. The name or the names and surnames of the persons entered therein ;

2. Their occupation ;

3. Their domicile ;

4. The amount for which they are assessed as proprietors, occupants or tenants ; and

5. All the details and information required to establish their identity.

For the purposes of this article, as well as for those of this chapter, the clerk or secretary-treasurer shall be considered to be an officer of the court.

In the extract delivered to the sheriff the name of the same person should appear only once as a juror.

2627. The clerk or secretary-treasurer shall make and keep, among the records of his office, and open to gratuitous public inspection, a duplicate of every extract or supplement which he furnished to the sheriff as aforesaid.

2628. Every extract or supplement shall be accompanied with an affidavit of the clerk or secretary-treasurer, in the form C of this chapter, made and signed by him before a justice of the peace, and testifying under oath to his belief in the correctness of the said extract and supplement and of the information therein furnished.

2629. The clerk or secretary-treasurer is entitled to receive from the corporation or municipal council of which he is the officer, upon production of the sheriff's certificate that such extract or supplement is made in the manner prescribed by this chapter, the sum of five cents for each name entered by him in such extract or supplement, and fifty cents for every necessary affidavit made by him.

2630. Before delivering to the sheriff an extract or supplement the clerk or secretary-treasurer of the municipality shall give a public notice to the effect :

1st. That such extract or supplement shall be submitted to the consideration of the municipal council at a general or special meeting of the council called for that purpose ;

2nd. That the persons, who have a right to be exempt from serving as jurors in virtue of the law, must ascertain from the clerk or secretary-treasurer that their names have been struck from the extract or supplement.

2. Such notice shall be published fifteen days before the meeting of the municipal council, in the following manner :

1st. In cities and towns it shall be published twice a week during two consecutive weeks in a newspaper published in the French language and in a newspaper published in the English language, or in both languages in the same newspaper if there be only one newspaper published in the locality ;

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2nd. In all other parts of the Province it shall be published in the manner prescribed by the Municipal Code for the publication of public notice.

3. The municipal council shall, at the meeting convened as aforesaid, examine the extract or supplement, make all corrections therein which it deems necessary, and approve the same, after having ascertained, with all possible care, that the names of all persons who are disqualified or exempt from serving as jurors are not therein entered.

In testimony of such approval, the extract or supplement is signed by the head of the council or councillor presiding at such meeting and also by the clerk or secretary-treasurer.

2631. If any clerk or secretary-treasurer fail to cause any extract or supplement, as the case may be, transmitted within the time and in the manner prescribed by this chapter, the sheriff shall procure the same from such clerk or secretary-treasurer; and he is authorized to take communication of the valuation rolls and other documents which may be found necessary in the preparation of such extract or supplement and he may recover, before any competent court, from the municipality (saving the latter's recourse against such clerk or secretary-treasurer) his disbursements in and about procuring such extract or supplement.

2632. If, in any municipality, from which jurors should be summoned, there exist no valuation roll, the sheriff shall, at the expense of such municipality, cause lists to be made of the persons domiciled within such municipality, and qualified to be grand and petit jurors respectively.

Such lists shall be prepared from the best information obtainable, and shall be sworn to by the person employed to make the same.

Such lists shall be retained, held, and used for the same purposes, in the same manner, and with the same effect, as if they were extracts from valuation rolls delivered to the sheriff under this chapter.

SECTION IV.

LISTS AND PANELS OF JURORS.

1. — *Lists of jurors made by the Sheriff.*

2633. Upon receipt of the extracts from the valuation rolls, the sheriff of the district shall forthwith prepare two lists; the first containing the names of the grand jurors, the second the names of the petit jurors.

2634. The grand and petit jury lists are made by the sheriff successively inserting, in registers kept for that purpose, the name of the first person in every extract furnished to him, and afterwards the name of the second person, and so on in rotation till the name of the persons appearing on each such extract are exhausted.

If the number of jurymen, appearing upon any of such extracts, exceed the number appearing upon others the sheriff shall successively take, from the more numerous extracts, a proportionate number of names, so that the jurors for each municipality may be distributed throughout the whole lists in a manner corresponding, as far as practicable, to the proportion which the total number of jurors in such municipality bears to the total number of jurors on the list.

2635. The lists of jurors, so entered in the registers, are authenticated by the certificate and signature of the sheriff, and such lists shall not be altered in any manner whatsoever, except in the manner prescribed by this chapter.

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2636. These registers shall be kept in the sheriff's office, and as soon as the grand jury list is prepared he shall give notice thereof to the prothonotary of the Superior Court, who shall forthwith prepare a copy for the use of such court.

2637. All persons shall, between the hours of nine in the morning and four in the afternoon of every juridical day, have free access to the copies of the grand jury list, so deposited in the office of the prothonotary, without being thereby liable to any fee or charge whatsoever.

2. — Revision of Jury lists.

2638. The lists of jurors are revised by the sheriff once a year.

Such revision shall be terminated as soon as possible, but not later than three months after the date of the reception of such lists.

It is based upon the information contained in the lists obtained from the municipalities under the law.

2639. Such revision is effected :

1. By drawing a line in ink through the name of each juror who has died or has removed his domicile from the municipality, or has become disqualified or exempt ;

2. By adding to the jury lists the names and surnames in full, with the residence and occupation, of all persons indicated as new jurors in the supplements.

Such additional names shall be arranged and distributed on the jury list, in the same manner as in herein provided for the distribution of the names of the jurors, entered in such list at the making thereof.

2640. When any name is so struck out, the reason of so striking it out shall be written opposite such name and be initialed by the sheriff.

When any name is added, the date of such addition shall be written opposite such name or at the end of such names if more than one be inserted on the same day ; and such fact shall be certified by the sheriff with his signature, in the same manner as on the first completion of the registers containing the jury list.

2641. The sheriff shall, immediately after the revision of any jury list, notify the prothonotary of the Superior Court, who shall forthwith correct the copy in his possession, so as to make it conform to the jury list so revised, and such corrections shall be certified by the sheriff.

2642. If it be established to the satisfaction of the sheriff, by affidavit in writing, to be deposited with him, that the name of any person, who is disqualified or exempt, has been erroneously inserted in the extract or supplement delivered to him, or that a juror has died or removed his domicile from the municipality, or has become disqualified or exempt, he shall strike such name from the list, and note the reason therefor opposite the name of the juror, in one of the columns left to that purpose, initial the same, and give notice thereof to the clerk or secretary-treasurer, who shall make the same changes in the duplicate of the list or supplement in his possession.

2643. Upon any complaint with notice to the party interested, and proof that in making a jury list the name of any person not qualified to serve as a juror, or disqualified or exempt, has been inserted therein, or that the name of any person, fit and qualified to serve as such, has been

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omitted therefrom, or that such list has not been made in the manner by this chapter directed, the court, or a judge thereof in vacation, may order the name of such unqualified or exempted person to be struck out of such list, or the name of any person, qualified to serve as a juror, to be inserted therein or the list to be made over again or corrected, as the case may be.

In such case the court or judge may make such order as to the cost of correcting or making a new such list, as may, in its discretion, appear just.

2644. If the lists of jurors, which the sheriff is required to make, revise, or renew, be not made, revised, or renewed, in the manner and within the period hereinbefore fixed, then as soon as the fact is made known, by the Attorney-General, clerk of the peace, or clerk of the Crown, to the court for the district, or to any judge thereof in vacation, the court or judge shall order the sheriff of such district to make, revise, or renew such list of jurors, and shall, by such order, fix a period within which such lists shall be made, revised or renewed; the old lists remaining in force until the new ones are completed or revised.

2645. The lists made, revised, or renewed under any such order, shall then be of the same force and effect as if originally made within the time prescribed by law, and shall remain in force as if they had been so made; but nothing herein contained shall relieve the sheriff from any penalty or liability incurred by his default to make, revise or renew such lists as prescribed by law.

2646. If, at any time, the registers, containing a jury list, become defaced or filled up, or if the corrections or alterations become so numerous as to render the said list illegible, the court sitting in the district, or a judge thereof in vacation, on a representation to that effect made by the sheriff, or in its own discretion, may order the sheriff to make a new jury list instead of revising the lists contained in the registers so defaced, filled up, or rendered illegible.

2647. Upon such order, the sheriff prepares such new lists in conformity with the law and in accordance with the information contained in the extracts furnished to him; and the old lists remain in force until the completion of the new ones.

3. — *Panel of Jurors.*

2648. In making any panel of grand or petit jurors, the sheriff of the district begins with the first name upon the register, when such register is newly made, and thereafter with the first name following that of the last juror already summoned.

2649. In the district of Quebec and Montreal, and in any district in which the sheriff is required to summon an equal number of persons speaking the French language and of persons speaking the English language, he shall, in making the panel of grand or petit jurors, begin by entering the first French name or the first English name on the register, and afterwards the first French name or the first English name immediately following the last French name or the last English name of the jurors summoned.

2650. Except in the district of Quebec and Montreal, and in other districts in which juries, one half speaking the French language and one

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half speaking the English language, are or shall be permitted by law, the panel of grand jurors, to be summoned for any term of the Court of Queen's Bench, or for any session of the court of general sessions of the peace, in any district, shall be made from the grand jury list then in force in such districts by taking therefrom the names of twenty-four persons in turn, following uninterruptedly and successively the order of the lists, commencing as provided in and by the two preceding articles, and so on successively until the number on the lists has been entirely gone through, and then beginning again and going through in like manner.

2651. Except in the district of Quebec and Montreal, and in the other districts in which juries, one half speaking the French language and one half speaking the English language, are or shall be permitted by law, the panel of petit jurors, to be summoned for any term of the Court of Queen's Bench, or for any session of the court of general sessions of the peace, shall be taken from the petit jury list then in force, by taking therefrom the names of forty persons in turn, following the order of the lists, commencing as provided in articles 2648 and 2649, and so on successively, until the number on the lists has been entirely gone through, and then beginning again and going through in like manner.

2652. In the districts of Quebec and Montreal there shall be twenty-four grand jurors and sixty petit jurors summoned to serve before any court holding criminal jurisdictions, one half of whom shall be composed of persons speaking the French language and the other half of persons speaking the English language.

Such persons are taken by the sheriff from the lists of grand jurors and petit jurors respectively, in the order in which the names of each class appear therein, commencing as provided by this chapter for the making of panels of grand and petit jurors, respectively.

The provisions of this article may be extended to any other district, by an order of the Lieutenant-Governor in Council, upon the presentment of the grand jury of such district, approved by the presiding judge, declaring the expediency of such extension.

2653. In districts other than those of Quebec and Montreal and in those which the provisions of the preceding article are made to apply, when application for a jury *mediatate linguæ* is made to the judge of the district in which the court is to sit, the court may, if it deem it expedient, authorize the sheriff of the district to summon a petit jury composed one half of persons speaking the French language and one half of persons speaking the English language.

Such summoning shall be made in the manner required by paragraph 3 of article 2660.

2654. If the sheriff or prothonotary be required by this chapter or by any order made thereunder, to insert, in any panel of any kind the names of persons possessing any special qualification, either of language or occupation, such qualification shall be by him inserted on the panel, opposite the name of such juror; such designation or qualification shall be *primâ facie* evidence of the possession of such qualification by the juror opposite whose name it is placed.

2655. Neither the grand jury panel, nor the petit jury panel, nor the name of any persons on such panel, shall be communicated, either verbally or otherwise, by the sheriff, his bailiffs or other employees, to any person or persons whomsoever, until after such panel is returned into

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court; nor shall such panels or the registers containing the jury lists be inspected by, or communicated to any person, except by the sheriff or his employees, and the prothonotary for the purposes of article 2636, unless upon a special order of the court or judge.

SECTION V.

SUMMONING OF JURORS.

1. — *Summoning of jurors in Criminal Cases.*

2656. In every district, except the districts of Quebec and Montreal, the clerk of the Crown, or the clerk of the peace, as the case may be, before giving instructions to the sheriff to summon persons to serve as grand or petit jurors, shall transmit to the Attorney-General a list of all the criminal cases to be tried at the next term or session of any court of criminal jurisdiction about to be held; and the clerk of the Crown or the clerk of the peace shall not give instructions to the said sheriff to summon a panel of grand and petit jurors for such term, unless authorized to do so by the Attorney-General.

Every such court shall nevertheless meet at the time fixed by law; and if thereupon it appear to the court to be necessary for the investigation or trial of any case coming before it, the court may then direct the sheriff to summon the usual number of persons to serve as grand or petit jurors before such court on any day to which it may be adjourned.

All proceedings, had at and before such adjourned court, shall be as valid as if held at or before such court at the ordinary time of holding it; and any judge, holding any such adjourned court, shall adjourn the same from day to day, so long as there is any business before it; but nothing herein contained shall prevent the court, in the absence of grand and petit jurors from proceeding with the despatch of such business as does not require the presence of either.

2657. In each district, the clerk of the Crown or clerk of the peace, as the case may be, shall with the authorization of the Attorney-General as aforesaid, give, at least thirty days before the term of the court, instructions to the sheriff to summon the grand and petit jurors.

2658. Immediately after receiving instructions to summons the grand and petit jurors, the sheriff shall prepare a summons to each juror, whose name is on the panel and whose attendance is required for the next following term.

The summons may be served by any bailiff of the Superior Court, or by any person of age and able to read and write, and such service shall be established by a certificate, stating whether it was made personally, or upon a reasonable member of the family, the name of the juror, the day, hour and place of service, and the distance necessarily travelled in order to effect such service.

2659. The certificate of the bailiff shall be on his oath of office; and the certificate of any person shall be sworn to before a justice of the peace, the sheriff or his deputy.

In the event of the summons not being served, either because the person, whose attendance is required as juror, is dead, or no longer resides within the municipality, or cannot be found, such facts shall also be mentioned in the certificate.

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2660. The sheriff is obliged :

1. In case of a first panel.

a. To cause the jurors upon the first panel which he has prepared to be summoned at least fourteen days before the first juridical day of the term, and

b. To cause the jurors upon the supplementary panel to be summoned at least six days before the term, so as to replace those who either could not be summoned or who have given notice of their intention to claim exemption ;

2. In the case of subsequent panels :

a. To cause the jurors therein mentioned to be summoned six days before the date upon which they are called upon to appear before the court, and

b. To cause the supplementary jurors upon such panels to be summoned at least forty-eight hours before the date upon which they are obliged to appear ;

3. In the case of article 2653 to cause them to be summoned in accordance with clause (*b*) of paragraph 2 of this article.

2661. A fee of thirty cents is allowed for each service upon a juror, and twenty cents per mile necessarily travelled to effect such service, but nothing is allowed for returning.

Such fees shall be paid by the sheriff out of the building and jury fund.

2662. In every summons served upon any juror, requiring him to attend and serve as a juror, a notice shall be inserted informing such juror that, if he intend to claim exemption from serving as such juror, under articles 2620 and 2621, he must, within three juridical days from the service of such summons, furnish the sheriff with an affidavit in writing, sworn to before a justice of the peace, or before the sheriff, or his deputy, establishing the ground of his claim to exemption ; and if such juror neglect so to do, he shall not be allowed the benefit of such exemption.

2663. No juror shall be exempt for any other reasons than those set forth in articles 2620 and 2621 ; nevertheless the court or judge may, if convinced that the public interest admits of such exemption being allowed, and on motion in writing, supported by an affidavit setting forth the ground of the exemption and the reason why it was not claimed within the above mentioned delay, allow it.

Likewise, when two or more members of a commercial partnership have been summoned to serve as jurors before any court of justice, the court or presiding judge may, at its discretion, exempt all the members of such partnership except one, although no notice has been given of an intention to claim the benefit of exemption.

2664. Immediately upon receipt of such affidavits, produced in support of claims for exemption, the sheriff shall add to the panel a further number of jurors, equal to the number of those who have furnished such affidavits, and those on the panel who have not been served with a summons, by reason of death, absence or other sufficient cause : which name shall be taken from the jury lists in the manner hereinabove established.

The sheriff shall proceed to summon such additional jurors in the same manner as if they had been upon the panel, in the first instance.

2665. All the provisions hereinbefore contained, as to notice to jurors respecting intended claims for exemptions, the mode of claiming exemp-

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tion, the invalidity of a claim for exemption without previous affidavit, and the summoning of additional jurors in the place of those not served with a summons, or who have furnished an affidavit in support of their claim for exemption, shall apply to the jurors so added to the panel, in the same manner and to the same extent as to the jurors placed on the panel in the first instance.

2666. The sheriff shall, before returning the panel before the court, state opposite the name of each juror who has furnished an affidavit, the fact that such affidavit has been furnished and the reason given by such juror in support of claim.

2667. The sheriff shall return, before the court, the panel, as first prepared by him, together with additions made to such panel; and shall also report his proceedings, including the certificates of service upon or attempts at serving those persons whose names appear in such panel and in such additions.

2668. If, in consequence of the disallowance of claims for exemption, there remain more than sixty jurors in attendance upon the court, the surplus number of jurors may be discharged by the court; such surplus number being taken from amongst the names added to the panel first made, commencing at the end thereof, unless specially otherwise ordered by the court; but such discharged jurors shall be considered as having served at the term of the court for which they were summoned.

2669. If it appear, either previous to or during any term of the Court of King's Bench or any court of general sessions of the peace, that the number of cases to be tried will require a second panel of jurors, the court or any judge thereof may, on application of the representative of the Crown, order the sheriff to summon a second panel of petit jurors, in the same manner and containing the same number as the first panel.

Such second panel of petit jurors shall, for the Court of Queen's Bench, be summoned to attend on the twelfth juridical day of the term whereof, and for the court of general sessions of the peace, on the tenth juridical day of the session thereof.

Such second panel of petit jurors shall attend and serve for the residue of every such term or session, unless the court has ordered a third panel, in which case they shall not serve for more than eleven days for the Court of Queen's Bench, or nine days for the court of general sessions of the peace.

When a second panel of jurors is summoned, as aforesaid, for any term or session, the jurors on the first panel shall be discharged on the eleventh juridical day of such term, or on the ninth juridical day of such session, as the case may be.

2670. Whenever the court is of opinion that the business of the term or session is likely to necessitate the attendance of the jurors summoned on the second panel for a period of more than fourteen juridical days in the Court of King's Bench, or for more than eleven juridical days in the court of general sessions of the peace, such court may, at the instance of the representatitve of the Crown, specially authorized by the Attorney-General, order the sheriff to summon a third panel, in the same manner, and containing the same number of jurors, as the second panel; and the jurors, summoned on such third panel, shall serve during the remainder of the term or session.

Such third panel of petit jurors shall, for the Court of King's Bench, be summoned for the twenty-third juridical day of the term, and for the court of general sessions of the peace, for the nineteenth juridical day of the session.

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2. — Summoning of Jurors in Civil Cases.

2671. Summons and other proceedings relative to jurors in civil cases are governed by articles 357 and following of the Code of Civil Procedure.

SECTION VI.

ALLOWANCE TO JURORS.

2672. Every petit juror summoned, whose domicile is outside of the limits of the municipality where the court is held, shall receive an allowance of one dollar for each day he is necessarily absent from his place of residence to serve before the court; every juror, whose domicile is within the limits of the municipality where the court is held, shall receive an allowance of fifty cents.

This allowance is paid by the sheriff, on a certificate of the clerk of he peace, or clerk of the Crown, as the case may be.

The counties of Gaspé and Bonaventure shall each be considered as one district for the purposes of this articles.

SECTION VII.

PENALTIES.

2673. Every sheriff, prothonotary, clerk of the peace, or clerk of the Crown, who wilfully or negligently offends against any of the provisions of this chapter, shall, for the first offence, incur a penalty not exceeding sixty dollars, nor less than forty dollars; for the second offence, a penalty not exceeding eighty dollars, nor less than sixty dollars; and for the third, or any subsequent offence, a penalty not exceeding two hundred dollars, nor less than one hundred dollars.

2674. Every person summoned to serve as a juror under the authority of this chapter, who refuses or neglects to appear in obedience to the summons, without assigning some lawful cause or execuse therefor, in addition to not being entitled to be paid, shall, further, incur a fine for each offence not exceeding five dollars, nor exceeding in the aggregate fifty dollars for all of such offences committed during the same term of any court.

Such penalties shall be imposed, sitting the court.

2675. Every clerk or secretary-treasurer of any municipality, who shall, after a notice of six days, neglect to transmit to the sheriff any extract or supplement required of him under this chapter, or who shall fail to comply with the other provisions of this chapter, shall incur a penalty of twenty dollars and a further penalty of five dollars for every day, subsequent to the service upon him of any information or complaint for such neglect, during which he shall continue to be in default.

2676. The penalties hereby imposed shall belong to the building and jury fund for the district in which the offence occurred.

Such penalties shall be levied, on a rule or order of the court, by the high constable or a bailiff of the district, uopn the goods and chattels of the person fined, in the manner prescribed by the Code of Civil Procedure for the seizure and sale of moveable effects.

2677. Upon the return of the high constable or of the bailiff entrusted with the execution of the rule or order, to the effect that the person, against whom he has proceeded under articles 2674, 2675 and 2676, has no goods and chattels, or that his goods and chattels are sufficient to satisfy such seizure, a warrant of arrest may issue against such person, who shall thereupon be imprisoned for not more than fifteen days in the discretion of the court; and the court may, at any time, reduce, mitigate, or remit the penalty or terminate the imprisonment.

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ANALYTICAL INDEX

A

	ART.
ABBATOIRS.	
Regulation of	596, 649
ABSENTEES.	
Definition of	19
Notices to	228, 240
ACQUISITION.	
Of property and public works ..4, 460, *Vide Expropriation.*	485-488*a*
ADJUDICATION. (V. *Sale and*)	1002
ADMINISTRATION.	
Of corporation funds	499-502
Of laws by secretary-treasurers	156
ADVOCATES.	
Exempt from office	209
Annual income of, taxable	710
AGENT.	
Of absentees	222
Notices served on	226-7
AGRICULTURE.	
Aid to	484
Abuses prejudicial to	558-560
AID.	
In the construction, improvement and maintenance of public works and undertakings not belonging to the corporation	477-483
To colonization, agriculture, horticulture, arts and sciences	483-484*a*
AMENDMENT.	
To report of special superintendent on the erection of a village	58
To by-laws on resolutions	157
To by-laws approved by lieutenant-governor and electors	468
To procès-verbaux	810, 810*a*
To procedure on appeal to Circuit Court	1072
ANIMALS.	
Straying	428-448
ANNEXATION.	
Of a town or village municipality to an adjoining local municipality	72-77
Of a territory to a town or village municipality	72-73
Of a territory to a rural municipality ..27, 30, 31, 33, 35, 36, 37, 41-44	
ANNULMENT.	
Of municipal by-laws	5, 698-708
Of procès-verbaux, rolls, resolutions and orders of council	5, 100

Digitized by Google

APPEALS. ART.
To the Circuit Court.. 1061-1079
To the County Council.. 925-936
No appeal to county council in certain cases.. 571
APPOINTMENT.
Definition.. 19 § 16
Of mayor and officers.. 101
By lieutenant-governor.. 177-181
By the council.. 185
Of warden.. 253
Contestation of.. 253, 346-364
Of local councillors by lieutenant-governor.. 326-329
Of officers by lieutenant-governor.. 330-336
Of mayor.. 330-5
APPROVAL.
By municipal electors.. 671-686
Of the lieutenant-governor in council.. 637-690
Of real-estate owners.. 497
APPORTIONMENT ACT.. 814-820
AQUEDUCTS.. 637-640
ARBITRATION.
As to water-works.. 639 *et seq.*
In expropriations.. 902 *et seq.*
Costs of.. 640a
Damages for neglect to make clearance.. 419
Qualifications of arbitrators.. 916
ARCHIVES.
Kept by secretary-treasurer.. 150
Open to inspection of public.. 164
Copies may be had.. 165
How recovered when detained.. 193-194
ARREARS OF TAXES.
Statement of.. 371-3
ARTS AND SCIENCES.. 484
ASSISTANT-SECRETARY-TREASURER.. 145, 172
AUDITORS.. 173-176, 204
Of the province.. 979

B

BALIZES.. 832-835
In fords.. 777
BATHING.. 605
BOARD OF DELEGATES.
How formed.. 266
When and where sits.. 267, 268, 269
How called.. 269, 270
Secretary of.. 271
Quorum.. 272
Chairman.. 273
Decisions.. 274
Powers and duties.. 275, 757-762, 858, 878
Appeal from decision of.. 1062

Digitized by Google

	ART.
BOARD OF HEALTH	607
BOUNDARY FENCES	425-427
Duty of field inspector	425, 425*a*
Responsibility of railway companies	425
BOUNDARY FENCES	428-448
BOUNDARY DITCHES	417-9
BREAD	579-581
BRIDGES.	
Municipal 19 § 26, 376, 382-392, 399, 405, 476-7, 485, 520 526-8, 531, 535-542,	850-859
BROME.	
Local corporations of, and county roads and bridges	1080
BY-LAWS	453-708, 925
Continued or annulled	5
Noted in register	157
Formalities respecting	453-8
When in force	456-463
When promulgated	455
Original to be signed by head of council	457
Remain in force how long	462
How amended	463
Of Municipal councils	464-609
Of county councils	510-524
Miscellaneous	503-509*a*
Of local councils	525-615
Of town or village councils	616-670
Approval of electors	671-686
Promulgation of	691-697
Annulment of	698-708
Concerning roads and bridges	526 *et seq.*
Concerning sidewalks and drains	544 *et seq.*
Concerning miscellaneous matters	547 *et seq.*
Concerning water-courses	549 *et seq.*
Concerning plan and division of municipality	554 *et seq.*
Concerning agriculture	558 *et seq.*
Concerning intoxicants	561 *et seq.*
Concerning powder	573 *et seq.*
Concerning bread	579 *et seq.*
Concerning trade licenses	582 *et seq.*
Concerning personal taxes	584 *et seq.*
BY-ROADS	826-830

C

CARTERS	582-3
CASTING VOTE	134
CERTIFICATE.	
Of publication and service of notice	219, 220
Accompanying original by-law	457
Of approval or disapproval of electors	686
Of valuators	913, 917, 918
Of Secretary-Treasurer in appeals	934
As to sale for taxes	1004
Tax upon license	615

Digitized by Google

	ART.
CHANGE.	
Of the limits of a municipality and its effects	78-92
CHIEF-PLACE	19, § 8, 258, 511
CIRCUIT COURT	512-518
Appeal from	1061-1079
CITIES INCORPORATED.	
Municipal code not applicable to	1
CLEARANCES	417-419
COLLECTION.	
Of taxes in local municipalities	954-971
COLONIZATION.	
Aid to	484
COMPULSORY SERVICE.	
Who are subject to	201 *et seq.*
CONSTABLE.	
Arrest at sight	1069
CONTESTATION.	
Of election	346-364
CONTESTED APPOINTMENTS.	
Of warden	253
Of members of a council	346-364
(See *Council, local council*).	
CORPORATION.	
How constituted	3
Powers of	4, 5
Defined	19, § 3
How represented	93
Decisions are annullable	100, 461, 698
Decisions open to public inspection	165
Responsible for acts of its servants	199
Bound to provide safe or vault	515
Responsible for damages	706
Exempt from taxation	712
Responsible for roads and sidewalks and water-courses	793, 757-793, 879
Limit fixed for debt	977
May purchase immoveables	1005
Judgments against	1026-1041
CORRUPTION.	
In municipal matters	346-347
Vide pp. 40-44.	
COUNCILS.	
Miscellaneous provisions	182-200
County council	246-260
Board of delegates	266-275
Delegates of the	261-265
Sessions of the	256-260
Special by-laws of the	510
Warden of the	248-255
Local council.	
Contested appointments of members of the	346-364
Officers of	365-448
Persons disqualified from acting as councillors	283-285

Digitized by Google

COUNCILS. ART.
Secretary-treasurer of the.. 368-373
General provisions.. 276-282
Sessions of the.. 286-290
Special by-laws of the.. 525
Municipal council.. 93-141
Head of the.. 121-125
Languages used in the.. 241-245
Members of the.. 108-120
Officers of the.. 142-200
Secretary-treasurer of the.. 142-145
Sessions of the.. 126-141
Special by-laws of the.. 464
Town and village councils.
Special by-laws of the.. 616-670

COUNCILLOR (local).
Definition of the term.. 19 § 3
Must read and write.. 336
Vacancy in the office.. 337-341
Contested elections.. 346-364

COUNCILLOR (county).
Definition of the term.. 246
Is not indemnified for his services.. 113
Penalty for refusing to accept the office.. 117
(See *Member of the council*).

COUNTY CORPORATIONS.
How formed and described.. 3
Particular rules applicable to.. 246-275

COUNTY DELEGATES.. 261-275

D

DEBENTURES.
Issue of..493-8, 978*a*. 981-997
Special provisions..974-6, 980
Interest upon.. 978*a*
What they must specify.. 981 *et seq.*

DEBTS (joint).
Settlement and division of.. 78-85

DEBTS.
Municipal..168, 972-997

DECENCY.. 597-606

DEFINITIONS of terms used in this Code.. 19

DELEGATES.
Board of.. 261-275
(See under *Council and Board of Delegates*).

DITCHES.
Boundary..420-424, 475, 771-773

DIRECT TAXATION.. 489-491

DISQUALIFICATIONS.
As municipal officer.. 203-8, 283

Digitized by Google

	ART.
DIVISION.	
Of the municipality into wards	554-557, 617-623a
Rural inspector of	365
Of common property	86-89
When limits of municipality are changed	78-92
DOGS	595-602
DRAINS	771-773

E

ELECTIONS.	
Of local councillors	292-325, 361-3, 497, 620, 622
Municipal	291, 671-687
ELECTORS.	
Municipal	291
Approval of	671-686
ERECTION OF MUNICIPALITIES	23-92
County	24-25
Local	26-77
Parish or part of	29-34
Rural	26-28
Townships or part of	35-38
Notice in Official Gazette	35, 63
Petition by proprietors	65a
Town	68-71
United townships	39-40
Village	51-67
ERRORS of form	14, 15, 16
EXAMINATION.	
Of the valuation roll	734-743
EXECUTION.	
Of judgments rendered against municipal corporation	1026-1041
EXEMPTIONS.	
From taxation	712
From municipal service	209 *et seq.*
EXPROPRIATION.	
For municipal purposes	902-924
For water supply	640-640i
EXTENT.	
Of the municipal code	1

F

FABRIQUES.	
Property of, not taxable	712
FENCES	475, 541, 612, 613, 647, 774-6
Cost of, how regulated	475
Wire fences	476a
Taken down in winter	541, 836
Council may forbid placarding	604
Council may order	612
Front fences, how paid for	774
How divided between neighbours	775
Must be kept in good order	776

Digitized by Google

	ART.
FENCES.	
Of what materials	776
Are part of road works	774
Damages resulting from defects	763
FERRIES..377, 384, 387, 391, 404, 476, 549-553,	860-866
Supervised by road inspector	377
Controlled by whom	860, 861
Nuisances in..386, 387, 391	
Inspection of	404
License for	862-866
Duration of license for	552
By whom given	549, 863
License fees	864
FINES.	
Recovery of	1042-1060
FIRE.	
In the woods	523
Prevention of..594,	653-667
FORDS..476,	533-777
FORMS..13, 14, 15, 16	

G

GAMBLING	598
GOOD MORALS (See *Decency*)	597-606
GOVERNMENT.	
Of the council and its officers	465-474
GUNPOWDER	573 *et seq.*

H

HEAD OF THE COUNCIL. (See *Mayor, Member of the council, Warden*).	
To whom applied	19 § 11
Appointed by the council	101
Superintends officers and execution of by-laws	121
Communicates information to the council	121
Signs, seals and executes all deeds	122
Reads to the council all communications	123
Furnishes government with information	124
Ex-officio a justice of the peace	125
May convene a special session	126
Presides over the council..131,	132, 134
Accepts surety bond of secretary-treasurer	149
Certificate of discharge to the sureties	153
Discharge of hypothec given by the sureties	154
May authorize the secretary-treasurer to pay money	160
Gives notice of neglect to make appointment	178
Signs the original of by-law	457
Signs certificate establishing approval of by-law	686
Deposit the funds	500
Accepts contracts for public works	895
May order any constable to arrest at sight	1060

Digitized by Google

	Art.
HEALTH.	
Public	607-608
HIGHWAYS.	
Public	526-553
HOLIDAYS.	
Council cannot sit on	129
Notices cannot be served on	229
Horse-races prohibited on Sunday	601
HOMOLOGATION.	
Of procès-verbal	806
Appeal from	926
HORTICULTURE.	
Aid to	484

I

INDEMNITIES AND RELIEF	568-591
INDEMNITY.	
To members of the county council	524
INSPECTOR. (road).	
Appointed in March	365
Time of office	366
Penalty for refusal	367a
Superintends works on roads, sidewalks and bridges, 376, 538, 785, 585	
Superintends ferries	377
Jurisdiction	378, 539
How replaced during incapacity	379
As to county works	380
Penalty for refusal	381
When the works are in common	382, 384
Snow-ploughs, &c	385
Nuisances	386-391
Encroachments	392
Survey or search	393
Unoccupied lands	394
Damages	395, 396
Works not performed within the delays	397
Must inform the council	399
The value of work, etc, may be recovered 398,	401, 402
His evidence	403
Notifies parties in default	397
Exception	21, 22
Inspects the works and reports	404
Prosecutes person in default	404
Prosecutes the corporation	539
Repairs any dangerous bridge	405
Dangerous works	476
The winter work	828, 856
The summer work	828, 856
Act of apportionment	827, 856
Selects localities for winter roads	832
Lays out winter roads on by-roads	832
Winter roads, how and where laid out 832, 833, 835, 840,	845
To superintend works given out by contract	901

Digitized by Google

INSPECTOR (rural). ART.
Appointed in March.. 365
Enters upon his duties.. 366
Penalty for refusal.. 367*a*
Time of office.. 366
Duties.. 406, 873
Jurisdiction.. 407, 376
How replaced.. 407, 379
As to county works.. 407, 380
Penalty for refusal to perform any duty.. 407, 381
Water course.. ..406, 407, 382, 384, 873
If personally interested.. 874
Must inspect water course every year.. 876
Water courses obstructed by snow or ice.. 877
Water performed.. 397, 408
The value recovered.. 408, 398 401, 402
His evidence.. 408, 403
Notice to parties in default.. 408, 397
Exception in favour of certain companies as to such works 21, 22
When the locality is situated in several divisions.. 409
His fees.. 410
His services gratuitous for the council.. 411
Special notices and orders how given.. 412
Tenant or occupant.. 413
Floods.. 414
Filth or dead animals.. 415
His duties as to clearances.. 417, 418
His duties as to boundary ditches.. 420, 424
His duties as to boundary fences.. 425, 427
Excavation in public road.. 883
Special notices and orders, how given.. 412

INTOXICATING LIQUORS.
By-laws concerning.. 561 *et seq.*

J

JUDGMENTS.
How executed against municipalities.. 1026-1041

JURISDICTION.
Of councils.. 464, 670

JUSTICES OF THE PEACE, duties and liabilities.. 6, 9, 367
Prosecutions before.. 1052-1060

L

LAND.
How described.. 20
Crown.. 780
Sale of, for taxes.. 998
Redemption of.. 1022-1025

LANGUAGES.
Of notices.. 224
Used before the municipal council.. 241-5
Use of one L. only.. 243-4
(See under *Council*).

Digitized by Google

	ART.
LICENSES.	
Ferry	549, 551-3
Liquor	568, 570, 615
Trade	582-583
LIEUTENANT-GOVERNOR	51, 61-2, 68, 74, 177, 180-1, 250-264, 326-9, 336, 340, 344, 364, 479, 480, 492, 493-520, 521, 542, 553, 623a, 638-640, 688-9, 724, 728-731
May revoke orders in council	10, 181, 329
Nomination by, in certain cases	177-181
Nomination of Warden	250
Nomination of delegates	264
Nomination of councillors	326-329
Approval of by-laws by	687, *et seq.*
Erection of village municipalities	51, 61, 62
Annexation of municipalities by proclamation	74
Fills vacancies in councils, when	340, 341, 344, 364
May require reports, etc	688
What by-laws must receive his approval, 479, 480, 492, 493, 520, 521,	542, 553
Details which he may require in valuation roll	724
Nomination of valuators	728, 731
LIGHT	637-640
LIMITATION.	
Of the number of licenses	568-570
LIMITS (See *Change*).	19 § 1
LIQUOR	19 § 31, 561-572, 606-615
LOANS AND DEBENTURES.	
By-laws	492-502
LOCAL COUNCILS, composed of seven councillors	276
Who hold office for three years	116, 277, 282, 363
First session	286
Time of ordinary sessions	287
Quorum, four members	289
Notice of two days for special meeting	290
Vacancies in	337-341
Vacancies in mayoralty	342-345
Contested appointments of councillors	346-364
Officers of	365-367a
Special provisions as to Sec.-Treas	368-373

M

	ART.
MAGISTRATES	203, 1077-8
MARKETS	625-636
MASTERS AND SERVANTS	624
MAYOR. (See *Head of the council, Member of the council*).	
Oath may be made before	6
How designated	281
Notice for election of councillors	294, 362
Penalty for neglect	295
Appointed at the first session	330
Must be notified thereof	331

Digitized by Google

	ART.
MAYOR.	
Appointment of by the lieutenant-governor	332, 344
Time during which he remains in office	333
Penalty for refusing to accept the office	334
Must know how to read and write	335
Vacancy in the office of	342-344
Pro-mayor	345
Contestation of the appointment of	347 *et seq.*
If rural or road inspector is incapable of acting	397, 407
Supervises road inspector	404
Bridge destroyed or broken	405
Destruction of building in case of a fire	665
Presides at meeting of electors for approval of a by-law	677
Cannot vote when presiding	679
Duties and powers when presiding	680-683
Informs lieutenant-governor of neglect of valuators	727
Transmits copy of valuation roll to county council	793
Signs warrants of seizure and sale for taxes	963
May become purchaser of immoveables sold for taxes	1005
MEETINGS.	
Of municipal electors	307-325
MEMBER OF THE COUNCIL (local or county).	
Meaning of the term	19 § 12
Oath	108
Discharge of his duties	111
Cannot hold subordinate offices	114
Is a competent witness	7
Attendance at sittings	465
(See *Office municipal councillor, Mayor, Warden*).	
May administer oath	98
Cannot be surety	115
Time of office	116, 363
Refusal to perform the duties of his office	118
Whose office is vacant	119
Illegally filling the office of member	120
A special session convened by two members	126
May give any information under oath	8
If interested in any question	135
If a majority of council are interested	136
May order constable to arrest at sight	1060
Indemnity for board and travelling expenses	254
How domiciled	283, 284
Must own real estate	283
President of election cannot be candidate	285
Contestation of the appointment of	346-364
MUNICIPAL CODE, where applicable	1
MUNICIPAL COUNCIL.	
Powers of	449-450
Members of	108-120
Head of	121-125
Sessions of	126-141
Officers of	142-181
Persons bound to accept office	201 *et seq.*
Persons disqualified	203 *et seq.*
Persons exempt	209 *et seq.*
Languages used in	241-245

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	ART.
MUNICIPALITIES.	
Powers of, in general	4
Parish	29-34
Township	35-40
Town or village	49-77
Of existing town and village	49-50
Rules common to all	276-448
MUNICIPAL OFFICERS.	
General provisions	182-200

N

NOTICES.	
Municipal	214-223
Certificate of publication or service	220
Public	232-240
Special	224-231
By rural inspector	415-6
NUISANCES.	
What are so deemed	387
Suppression by inspector	386, 415
Penalty for	391, 416
By-laws respecting	592-596
By-laws respecting	641-652

O

OATH.	
Before whom, to be taken	8
By officers, registered	110
By voters	315
OFFICE.	
Of the council	105-6, 171, 473
OFFICES (municipal).	
Meaning	19 § 15
Councillors cannot hold subordinate office	144
Persons exempt from	209-213, 367, 305
Persons disqualified for	155, 203-208, 283-5
Persons bound to accept	201-202
OFFICERS (municipal).	
Evidence on behalf of corporation	8
Council appoints	182
Appointed by resolution	185
Oath of office	186
Acts are valid even if illegally appointed	188
Removal of	189
Duties of when leaving office	191
Recourse against	193, 194, 195
Corporation responsible for	199
Liability of	200

P

PARISH MUNICIPALITIES	29-34
PARSONAGES	712, 905

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	ART.
PETITION.	
By proprietors	65*a*
By electors	74
PENALTY.	
For neglecting to act under authority of this code	9
For injuring document posted up	11
For neglecting to attend as a witness	99
For refusing to act as councillor	117
For refusing to act as warden	254
For refusing to act as mayor	334
Against secretary-treasurer.	
For the secretary-treasurer or mayor refusing a receipt, to receipt or deposit a document	103
For lending moneys	161
Acting without security	151, 152
For neglecting orders of municipal officers	195
For molesting any municipal officer	195
For any municipal officer refusing to give a receipt	196
For neglecting to read public notices aloud	234
For neglecting to give notice required for electors	295, 362
For voting at election without being qualified	316
Against divers persons.	
For neglecting precautions in work on a public road	390
For obstructing public road	391
For depositing filth or dead animals	416
For refusing to obey order respecting clearances	418
For refusing to obey order respecting boundary ditches	423
For obstructing any boundary ditch	424
For refusing to obey order respecting boundary fences	427
For taking away any animals impounded	439
For allowing animals to stray	440
For the county corporation for neglecting vault or safe in the registry office	515
For selling intoxicating liquors	566
For voting on by-law when not qualified	680, 316
For neglecting to read aloud a by-law	693
For the owners of roads refusing to close the same when ordered by council or delegates	249
For refusing information required by valuators	745
For refusing to perform work on public roads	791
For refusing to perform work on bridges	857, 791
For refusing to perform work on water courses	878, 791
For injuring trees or works on public roads	792
For not keeping roads and sidewalks in repair	793
For corporations not keeping bridges in repair	858, 793
For corporations not keeping water courses in repair	878, 793
For removing balizes on a winter road or for placing them improperly	834
For driving fast over any bridge	859
For injuring any bridge	859
For ferryman without a license	862
For obstructing any water course	879
PENALTIES. (certains kinds of).	
Are municipal taxes	19 § 22
By municipal officers; how and by whom recoverable	200
By fine or imprisonment or by both	508

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	Art.
PENALTIES.	
Set forth in the by-law	508
Confiscation..577,	581, 636
The contractor is liable to penalties..790,	858, 878
The recovery of..1042 *et seq.*	
On owners of animals straying	440
May be paid before suit brought	441
To whom belonging	448
Recovery of	1042
For neglect in reference to the death, insolvency, or absence of sureties	152
For neglecting to render account	167
For neglecting to send the statement required by art. 166	169
For neglecting to send registrar copies of by-laws regarding debentures	995
Other officers.	
For road inspector refusing to act	381, 785
For the rural inspector refusing to act..407,	381, 873
For pound-keepers	429-432
For valuators	729-730
For the valuator, rural or road inspector, or pound-keeper refusing to accept or continue his office	367*a*
PLACES (public)	543
PLAN AND DIVISION.	
Of the municipality (See *Division*).	554-7
POLL.	
Asked for	311-12
POUND-KEEPERS..336, 365-367*a*, 428-448,	560
POWERS.	
Of municipal councils..449-452	464-670
PRESIDING OFFICER.	
At the election	296-306
Of the council..131-4, 157, 273-4, 296-326, 285,	457, 623
PROCEEDINGS.	
Special	1026-1087
PROCES-VERBAL.	
Remain in force until altered	5
How set aside	100
How drawn up	796-821
What it contains	799, 802
Homologation of	806
Appeal from homologation of	926
Coming into force of	809
PROCLAMATION.	
Of new village	63
Of new town	68
Of annexation	74
PROHIBITION.	
Of the sale of intoxicating liquors	561-567
PRO-MAYOR	345
PROMULGATION.	
Of municipal by-laws	694-697

Digitized by Google

	ART.
PROPERTY.	
Acquisition by corporation	4, 485-488
What is taxable	19 § 17, 709-715
Valuation of	709-747
Obligations continue after separation	78
PROPRIETOR.	
Meaning	19 § 18
Agent for absent	222
Absent and no agent	228
Sole right to vote	65a, 497, 986
Liability for works	781, 858, 878
PROSECUTION.	
Before justices of the peace	1052-1060
PROVISIONS.	
Declaratory	2-16, 20-22
Common to all municipalities	93-245
Common to all county corporations	246-275
Common to all local corporations	276-448
Sale of	627-8
Exceptional	841-847a, 866 1080-1085
Final	1086-1087
Interpretative	17-19
PUBLIC WORKS	392-901
By-laws respecting	475-483
PUBLICATION.	
Of municipal notices	218, 232
Certificate	220
Language used	244
PUBLIC NOTICES	415-416

Q

QUORUM.	
Adjournment, if none	133
Of the county council	259
Of the board of delegates	272
Of the local council	289

R

RAILWAYS.	
Liability for fences, bridges, roads, etc	21
Liability for taxes	22
Employees exempt from municipal offices	209
Aid, by council	479 *et seq.*
Acquired by council	485
RATE-PAYER.	
In case of division of municipality	90
Notice by, to fill vacancy	178, 250, 264-332
READING AND WRITING.	
In what cases essential	17, 335-336
RECOVERY.	
Of penalties. (*Vide* penalties)	1042-1051

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	ART.
REDEMPTION.	
Of lands adjudged..1007,	1022-1025
REGISTRY OFFICE.	
Of the county	512-518
RELIGIOUS CORPORATIONS.	
Exempt from taxation	712
RESIGNATION	337
RESOLUTIONS.	
How annulled..5,	100-157
Instead of by-laws	460
RIGHT OF PASSAGE.	
Over county bridges	520
Over local roads and bridges	542
Over water courses	550, 551
RIVERS.	
Municipal water-courses	868
ROADS.	
Persons liable for work on	822-830
ROADS AND BRIDGES..519-522,	526-542
ROLL (valuation).	
Making of the	716-733
Examination of the	734-743
Of apportionment	814-820
ROADS.	
Front..376, 386-392, 397, 405, 485, 591, 521, 604, 645,	544-8 824-825
Defined	19 § 27
General chapter on municipal roads	748-849
How superintended	376-405
Inspector of	376-405
Acquisition of	485
Mile and guide posts on	519
Regulation of vehicles on	521, 548
Sidewalks on	544, 546
Driving upon	548
Obstruction of	645
Front roads	824, 825
By-roads	826-830
Winter roads	831-849
Removal of snow from	670
Sweeping and watering	670
Opening of trench in	883
Persons liable to work on	822-830
Procès-verbal respecting	796-813
Act of apportionment	814-820
ROAD INSPECTOR (See *Inspector*)..365,	376-405
RURAL INSPECTOR (See *Inspector*)..365,	406-427
RURAL MUNICIPALITIES	26-28

Digitized by Google

S

	ART.
SALE AND ADJUDICATION.	
Liable for municipal taxes	998-1021
SALE.	
Of intoxicating liquors	561-572, 606
Of animal impounded	43 *et seq.*
Of public repairing	787, 828-851
Of bread and wood	579-581
Of land for taxes	998
SECRETARY-TREASURER	142-5
SECRETARY-TREASURER (local or county).	
Appointment	142
Neglect of the council	177
No person is bound to fill the office	201
How domiciled	203
Time of office	144
Oath of office and security	144
Oath before him	6, 98
May appoint an assistant	145
His sureties	146, 155
Replacement of sureties	152
Has charge of the archives	156
Cannot divest himself of the archives	156
May convene a special session	126
Attends sessions of council and keeps register of proceedings	157
Countersigns the minutes	157
Copies and extracts of archives, documents, etc., certified by him, are evidence of their contents	158
Collects moneys of the corporation	159
Pays amounts due	160
When such authorization is necessary	160
A receipt without the value	161
Cannot lend money	161
Books of account	162
Vouchers	162
Repertory of documents, etc	163
Inspection	164
Copies and extracts	165
Notices to companies	165
Account in June	166
Sued to render account	167
Prescription	170
Place at which he holds his office	171
Productions, services and deposits	107
Is an officer of every court	172
Must notify the lieutenant-governor when council neglect to make an appointment	178
Must notify municipal officer when he is appointed or removed	185
Signs original by-law	457
May deposit the money	500
Approval of by-laws by municipal electors, 457, 675, 676,	678, 686
Approval by the lieutenant-governor in council	457, 498, 687
The promulgation of by-laws	642 *et seq.*

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	Art.
SECRETARY-TREASURER (local or county).	
Duty when work of another council is being done	806
Notice of homologation of a procès-verbal	808
Expropriation indemnities	921-2
Debentures	990-5
Judgment against corporation	1026
Office of the council	105
Where such office is established	171
SECRETARY-TREASURER OF THE COUNTY. (See *Secretary-treasurer* (local or county).	
Erection of a village municipality	55, 60, 64
A statement of debts	168a, 169
Informs lieutenant-governor of neglect to appoint warden or delegates	250, 264, 178
Transmits a copy of the by-laws to local municipality	453
Appeal to county council	930
Gives notice	931a
Transmits a copy of the decision	934
Apportions the taxes	940
Sale of lands	998 *et seq.*
List of lots sold	1006
Deed of sale	1009
Deed to be registered	1010
If the land is also advertized by the sheriff	1016, 1041
When lands are redeemed	1024
Appeal to the circuit court	1063
SECRETARY-TREASURER (local). (See *Secretary-treasurer* (local or county).	
A statement of debts and statistics	168, 169
Notice for county purposes	235
Election of councillors	294, 362
Presides at election of councillors	290, 363
Notifies lieutenant-governor if no election takes place	326
Notifies the warden of appointment of the mayor	331
Notifies the mayor of his appointment	331
Register of road and water courses	368, 369
Juries and parliamentary elections	370
A statement of arrears	371, 372
Extract of statement	373
May be employed by valuators	375
Poll clerk	678
Reading of county by-laws	693
Must publish by-laws	695
Iron or wooden railways	720
Signs the valuation roll	725
Notice to lieutenant-governor if no valuation roll	727
Deposit of the valuation roll	732
Amendments to the valuation roll	738
Copy of the valuation roll for county council	739
Must publish any decision of the county council	935
Transmits documents to the county council	936
Collection of taxes	954-971
When land is to be sold files a statemnet of taxes	969
Must give proprietors or occupants notice	1006
SECURITY to be given by secretary-treasurer	146-155a
On penal action	1046
By policy	155a

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	ART.
SEPARATION.	
Of a territory united to another	45-48*b*
Work after the	90
SERVANTS	606, 624
SESSIONS.	
Of the council	126-141, 286-290
How convened	126
Minutes of	127
Begins 10 a.m	128
None on non-juridical day	129
Open doors	130
Casting vote of presiding officer	132
Voting at	133-137
Adjournment of	137-138
Place of meeting	141
In new municipalities	286-290
SETTLEMENT AND DIVISIONS.	
Of joints debts	78-85
SIDEWALKS AND SEWERS	544-546
Establishment of	543-546
Supervision of	376, 785
Nuisances upon	386, 388, 391, 645
Inspection of	404
Dangerous work done on	476
Removal of snow, etc	644, 670
Height of	667
Cleanliness, etc., of	670
Goo order of	788, 793
Damages resulting from bad condition (See *decisions under*)	793
Liability of contractor	790
Work done by road inspector	397-403
STATEMENT AND RETURN.	
By secretary-treasurer	168, 168*a*, 168*b*, 169, 941, 371-2-3, 979, 990
STORAGE.	
Of gunpowder, etc	573-578
SUPERINTENDENT.	
Special, named by county council	52-64

T

TAXATION DIRECT	489-491
TAXES AND DEBTS MUNICIPAL	937-997
TAXES MUNICIPAL	937-997
How apportioned	937 *et seq.*, 942
Duty of secretary-treasurer	940
How collected	941, 948, 954-971
Based on real or agricultural value	942*a*
Exempt from formality of registration	946
Bear interest at six per cent	947
May be collected from occupant or owner	948
Prescription of arrears	950
Suits for, how brought	951

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	ART.
TAXES MUNICIPAL.	
For public works	953
Personal	584-585
TENDER.	
For winter work	828, 856
TOLLS	520, 542, 550-1
TOWN INCORPORATED.	
Statutes concerning, under	1
TOWNSHIP MUNICIPALITIES	35-38, 953
TOWNSHIP UNITED	39-44
TREES.	
Protection of	558

V

VACANCIES.	
In the office of councillors	337-341
In the office of mayor	342-345
In the council	337-345
VALUATION	709
(See *Taxable property*).	
VALUATION ROLL.	
Making it	716-733
Examination of it	734-743
General provisions	745-7
VALUATORS	365, 374-375
Vehicles	521, 632-3
VILLAGE MUNICIPALITIES	49-50, 51-71
(See *Annexation, Municipality*).	

W

WARDS.	
Division into	617-623a
WARDEN. (See *Head of the council, Member of the council.*)	
Oath before a warden	6
Is appointed in March	245
When appointed in a new municipality	248
Vacancy in the office, when filled	249
Appointment by lieutenant-governor	250
Time during which he remains in office	251
May be removed	252
Contestation	253
Penalty for refusing to accept office	254
When there is no warden	255
Ex-officio a county delegate	262
Notice of election in new local municipality	294
Penalty for neglect	295
Indemnity for board and travelling	524
Approval of by-law by the electors	672, 684
Special session of the council	930
Notice of the day if appeal	931a
A deed of sale	1009
Registration of deed of sale	1010

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	ART.
WATER-COURSES.	
By-laws concerning	549 *et seq.*
Under control of what corporation	860, 861
Nuisances in	386, 387, 391
Inspection of	404
License for	862-866
Duration of license	552
By whom given	549, 863
License fees	864
Municipal	867-891
WATERS AND LIGHTS	637-640
WEEDS	778
WITNESSES.	
Payment of	98
Electors or councillors competent as	7
WOOD, sale of	580-1
WORKS PUBLIC.	
On roads	777-795, 822-849
Of municipal corporations	892-901
Of the municipality	475-476
Aid to	477-483
Other works	892-901

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